

SHORELINES HEARINGS BOARD

STATE OF WASHINGTON

DR. DONALD DAVIDSON, GEOFFREY
BIDWELL, BUILDING A BETTER
BELLEVUE and KEMPER
DEVELOPMENT COMPANY, a Washington
corporation,

Petitioners,

vs.

THE CITY OF BELLEVUE, through its
DEVELOPMENT SERVICES
DEPARTMENT, Decision Maker; and
SOUND TRANSIT and ELLIE ZIEGLER
FOR SOUND TRANSIT, Applicant,
DEPARTMENT OF ECOLOGY,

Respondents.

No. _____

PETITION FOR REVIEW

I. PETITIONERS

The Petitioners are Dr. Donald Davidson, Geoffrey Bidwell, Building A Better
Bellevue and Kemper Development Company. Petitioners are represented by:

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II. DESCRIPTION OF PETITIONERS

Petitioner Dr. Donald Davidson is a resident of the City of Bellevue with a strong history of public service to Bellevue. He sat on the City Council for more than 25 years and was the mayor of Bellevue for four years. During his time on the City Council, Dr. Davidson served as Environmental Services Commission Liaison, served on the Metropolitan Water Pollution Abatement Advisory Committee and on the Regional Water Quality Committee, chaired the Watershed Resource Inventory Area 8 Forum, served on the Cascade Water Alliance Board and its Resource Planning Committee, co-chaired the Puget Sound Salmon Recovery Council, and served on the Shared Salmon Strategy Development Committee. Dr. Davidson's passions are fly-fishing, bagpiping, and cleaning up Puget Sound. He has used the Mercer Slough Nature Park shoreline for recreation frequently and he intends to continue to do so.

Petitioner Geoffrey Bidwell—a retired rocket engineer—has resided in Bellevue for the past 38 years. He is the founder of the Save the Mercer Slough Committee formed in 1986. The organization was instrumental in petitioning the City of Bellevue to prevent commercial development in the Mercer Slough wetlands and in forming the Mercer Slough Nature Park. Mr. Bidwell has worked to protect the land and its vegetation and wildlife, and the waters adjacent to the Mercer Slough and their aquatic life. He also personally frequently avails himself of the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines within Mercer Slough and he intends to continue to do so.

Petitioner Building a Better Bellevue ("BBB") is a nonprofit association comprised of Bellevue homeowners, residents, businesses, and neighborhood groups concerned with protecting Bellevue's neighborhoods, parks, and historic resources. Members created BBB in June, 2010 in order to give a voice to the views and positions of its members and to represent

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1 to political and governmental leaders of the City of Bellevue, and other local, regional, and
2 federal government agencies, the strong concerns of its members regarding implementation
3 and operation of light rail services. It advocates in order to obtain assurances that the City of
4 Bellevue does not damage their neighborhoods, nearby parks, and natural environment
5 during the planning, implementation, and operation of light rail services. Its members avail
6 themselves of the public's opportunity to enjoy the physical and aesthetic qualities of natural
7 shorelines within Mercer Slough and they intend to continue to do so.

8 Petitioner Kemper Development Company ("KDC") is a fourth-generation, family-
9 owned company whose growth has mirrored the astounding boom of the Eastside
10 of Puget Sound and is at the epicenter of one of the country's most sophisticated, fastest-
11 growing markets. KDC is proudly the largest contributor of tax revenue to the City of
12 Bellevue. KDC has a green initiative, with leading practices to control waste while
13 significantly reducing water and energy consumption. KDC believes the Mercer Slough
14 Nature Park includes some of the most valuable and fragile natural resources in the State of
15 Washington and is dedicated to its preservation. Specifically, KDC recognizes the unique
16 importance of a 320 acre natural area in an urban setting. KDC and its founding family have
17 repeatedly contributed to the historic legacy of the Eastside. Almost all of the users of the
18 KDC Bellevue Collection (Bellevue Square, Bellevue Place and Lincoln Square) travel on
19 Bellevue Way SE for access from the south, east, and west. Increasingly, due to congestion,
20 I-405 is no longer the route of choice to Downtown Bellevue. In addition, maintaining the
21 travel capacity of Bellevue Way is critical to the livelihood and viability of the KDC
22 Bellevue Collection and its many commercial partners.

23 The Petitioners collectively exercised many opportunities to provide public comment
24 and have their voices heard regarding the proposed project and its impacts to the shoreline.
25 For instance, the Petitioners commented upon the Shoreline Substantial Development Permit,
26 the Shoreline Variance, the draft EIS ("DEIS") and/or draft Supplemental EIS ("DSEIS").

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1 The following is a non-exclusive list of the substantive topics addressed in
2 the comments:

- 3 1. The inability to fully compare the impacts of segment alternatives on the natural
4 environment;
- 5 2. Construction, visual, wetland, traffic and transportation, private property,
6 pedestrian safety, and social impacts;
- 7 3. Impacts to the Mercer Slough;
- 8 4. Impacts to the historic Winters House, businesses, residents and other property
9 owners from traffic congestion, construction, noise and vibrations;
- 10 5. Conflicts with Land Use Plans, Goals and Policies; and
- 11 6. Identification of alternative B-7 as the B segment with the least environmental
12 impacts and/or the benefits of an alternative alignment, namely B-7R (the Segment B
13 Alternatives are shown on **Exhibit A**).

14 Each Petitioner has standing under both the Shorelines Management Act (“SMA”) and the State Environmental Policy Act (“SEPA”), as they each will suffer injury if the
15 shoreline of the Mercer Slough Nature Park is adversely impacted by the project. As used in
16 this Petition the reference to the “Project” is to the B Segment of the East Link light rail
17 project. They each have an interest in the public use of the Mercer Slough and the Nature
18 Park, their own usage of Mercer Slough and the Nature Park, and environmental stewardship
19 within the City of Bellevue.
20

21 **III. LOCAL GOVERNMENT FOR WHOSE DECISION**
22 **PETITIONERS SEEK REVIEW**

23 This Petition seeks review of the Shoreline Substantial Development Permit (“SDP”) and Shoreline Variance (“Variance”) (collectively the “Permits” or the “Decision”)¹, issued
24 by the City of Bellevue (“City”), through its Development Services Department, to Sound
25

26 ¹ Attached as **Exhibit B**.

1 Transit for construction of the East Link light rail extension through the City. The
2 Department of Ecology also approved the Variance. The SDP authorizes development of a
3 new regional light rail transit ("RLRT") facility. The Variance authorizes construction of the
4 light rail facility 10 feet higher than the 35-foot shoreline height limit within the B Segment
5 of the Project alignment north of the South Bellevue Park-and-Ride and south of the historic
6 Winters House. Sound Transit's application is included as a CD and referenced as **Exhibit**
7 **C**.

8 **IV. ISSUES PRESENTED FOR REVIEW**

9
10 A. Sound transit and the City staff misrepresented City Council actions so that the
SDP and the Variance were treated as a *fait accompli*.

11 B. Sound Transit and the City staff did not consider the environmental impacts of
12 the Issaquah extension on the Mercer Slough Nature Park.

13 C. Review of the Project has been improperly piecemealed.

14 D. The SDP does not comply with the City's Shoreline Master Program ("SMP").

15 E. Sound Transit has not demonstrated that the criteria for the granting of a Shoreline
variance have been met.

16 F. New information shows the Project will have more significant environmental
17 impacts on the historic Winters House than was disclosed in the environmental documents.

18 G. Shoreline impacts have been ignored or discounted because the City staff treated
the Project as having been approved by the City Council.

19 H. Changes in the Project will have significant adverse environmental impacts that
20 have not been adequately evaluated or mitigated.

21 I. New information shows the Project will have significant adverse environmental
impacts that have not been adequately evaluated or mitigated.²

22 J. Alternative B-7R or a tunnel are reasonable and feasible alternatives with lesser
23 environmental impacts than the chosen alternative B-2M.

24 K. Construction and operational impacts of the Project have not been adequately
disclosed, evaluated, and/or mitigated.

25 L. Tree removal proposed for the Mercer Slough Nature Park does not comply with

26 ² For ease of discussion, the Petitioners address Issues G-I together in § VIII.G .

1 the SMP and will have significant adverse environmental impacts.

2 M. The proposed shoreline fill is prohibited by the SMP.

3 N. The South Bellevue Station does not comply with the SMP.

4 O. The impacts to downtown Bellevue have not been addressed adequately in the
5 FEIS.

6 V. PROJECT DESCRIPTION

7 Sound Transit proposes to construct the first phase of Sound Transit 2, a new RLRT
8 facility between Seattle and the east side of Lake Washington. The proposal, known as East
9 Link, extends the light rail system approximately 14 miles between Seattle and the east side
10 of Lake Washington and includes 10 stations serving Seattle, Mercer Island, South Bellevue,
11 downtown Bellevue, Bel-Red, and the Overlake area in Redmond. Sound Transit divided the
12 route into five segments, Segments "A" through "E."

13 The issues in this Petition for Review arise from the SDP and Variance to allow
14 implementation of the B Segment of the East Link. These are the first and only permits that
15 will be subject to administrative review. The remaining actions are segmented so that there
16 will never be an opportunity to address in a comprehensive fashion the environmental
17 impacts that are not addressed by mitigation proposals or the efficacy and adequacy of
18 mitigation and alternatives that will reduce the impacts of the B Segment.

19 To understand why this Petition has been presented for review one needs to have a
20 clear picture of what the B Segment is and is not. The most succinct description of the B
21 Segment is found in Exhibit C to the Umbrella Memorandum of Understanding between the
22 City and Sound Transit ("MOU") adopted in November, 2011. It is important to start with
23 this description because the City and Sound Transit use the adoption of the MOU as
24 justification for the City's approval of the SDP and Variance.

25 In June, 2013, the Council adopted its First Amendment to the MOU ("First
26 Amendment"). The First Amendment modified Exhibit C, but made only minor changes in

1 the B Segment. When the MOU was first adopted, the design of East Link was only 5%
2 complete. In fact, the design was not 60% complete until December, 2013, six months after
3 the City Council adopted the amended Exhibit C.

4 The amended Exhibit C, attached to this Petition as **Exhibit D**, describes the B
5 Segment as follows:

6 Segment B: South Bellevue

7 The selected project is elevated in the I-90 center roadway, crosses over westbound I-
8 90, and continues elevated on the east side of Bellevue Way SE to the South Bellevue
9 Station, located at the current South Bellevue Park-and-Ride Lot; this alternative also
maintains the westbound and eastbound I-90 HOV direct access ramps.

10 The South Bellevue Station includes a parking structure with approximately 1,400
11 stalls on up to five levels built on the site of the existing South Bellevue Park-and-
12 Ride Lot. After leaving the station, the route transitions to a retained cut on the east
13 side of Bellevue Way within Mercer Slough Nature Park to the intersection of
14 Bellevue Way SE and 112th Avenue SE. In front of the Winters House the route is in
15 a lidded retained cut approximately 170 feet long. All traffic impacts on Bellevue
Way will be mitigated by adding an HOV lane from the main entrance of the S.
Bellevue park-and-ride to I-90 and installing a U-turn at the south entrance to the
park-and-ride.

16 The project transitions from retained cut to at-grade on the east side of 112th Avenue
17 SE until SE 15th where it crosses to the west side. 112th Avenue SE will be raised
18 over the light rail crossing of SE 15th. The project remains at-grade along 112th
Avenue SE until reaching Segment C at SE 6th Street.

19 A traction power substation is located on the east side of Bellevue Way at SE 30th
20 Street, near the Swaylocken boat launch and a cross-over is located south of the
South Bellevue Station. All track within Segment B is direct fixation or ballasted.

21 Prior to adoption of the First Amendment, Sound Transit published its Final
22 Environmental Impact Statement ("FEIS"). Subsequently, the City and Sound Transit
23 completed a cost savings analysis and agreed to certain modifications to the East Link
24 Project. It should be noted that this cost savings analysis focused principally on ways to
25 reduce the cost of the B Segment to help pay for the downtown tunnel. This work was
26 completed before the adoption of the First Amendment.

1
2 It is striking what the City Council did not know regarding design and environmental
3 impacts when the First Amendment was adopted in June, 2013. For example, it was not
4 aware that Sound Transit does not intend to mitigate operational noise impacts on Mercer
5 Slough, contending the noise impacts of I-405 and I-90 will be greater than noise impacts
6 from operation of light rail. Sound Transit has also elected to not mitigate light and glare
7 impacts of the South Bellevue Station (including the 5-story parking garage), claiming that
8 they are no greater than the impacts of the existing surface park-and-ride. Further, the
9 Council was not aware that dewatering problems would require significant design changes
10 that will impact the Winters House, Bellevue's only building and grounds on the National
11 Register of Historic Places. In June, 2013, the Council was not aware that over 1,200 trees
12 that mark the west edge of the Nature Park would be removed; that the work zone within the
13 Nature Park would be as much as 150 feet wide;³ and that the B Segment design included
14 plans to cross Mercer Slough to reach Issaquah.

15 Throughout 2013, the Council also was not aware of the measures that Sound Transit
16 would use to mitigate construction impacts. All the Council knew was that construction
17 would take as long as 5 years. We now know that it will take 6 to 7 years,⁴ and, thus, be
18 virtually permanent. The permanence of these impacts is discussed in detail further below.
19 In fact, the City still did not know in sufficient detail what construction mitigation would be
20 implemented by Sound Transit when it approved the SDP and Variance in November, 2014.

21 The Council did not know that the light rail line will establish a permanent barrier to
22 the extensive wildlife and human crossings into and from the Nature Park. This barrier is
23 caused by the erection of 8 to 10 foot high concrete noise walls along the west side of the

24
25 ³ 90% Design Drawings, Contract E320, L85-TMP-201 through -205.

26 ⁴ The City itself will be adding an additional up to one year of major construction in the Bellevue Way
and 112th Avenue roadways associated with reconstruction of a major sewer main, owned and operated by the
City, that lies within the overall East Link right of way. This sewer main must be relocated in order to build the
East Link system. So, the total period of East Link-related construction duration is actually 7 years.

1 line and six foot-high braided steel fences on the tops of the rail line trench to the south and
2 north of the Winters House. Consequently, all access is closed off other than for the very
3 short distance of the slab over the top of the trench, in front of the Winters House. This
4 information was first presented to the Light Rail Permitting Advisory Committee ("CAC")
5 and the public in November, 2014, after the City had approved the Permits and forwarded the
6 Variance to the Department of Ecology for its approval.

7 The Council did not know that the Project will completely block views of Mercer
8 Slough and the Nature Park from all points west of the rail line facility. Basically the Nature
9 Park will be walled off on its western side, permanently destroying the visual and physical
10 access connection from the west.

11 The Council was not aware of the extent of construction impacts along Bellevue
12 Way. Construction is planned from 7 AM to 6 PM Monday-Friday and 9 AM to 6 PM
13 Saturday. In its draft Design and Mitigation Permit application, Sound Transit has made
14 clear that it wants the ability to work outside of these hours if it and its contractor "determine
15 that work will need to take place outside of these hours."⁵ Once the Project is ultimately
16 completed, trains will travel every 3 to 7 minutes for 18 hours a day, from 5:00 AM to 11:00
17 PM, every day of the year. Additionally, because of the separate and fragmented decision to
18 locate a maintenance facility in Bellevue, the Council was not aware that nighttime rail use
19 would be expanded significantly to include the 12:00 AM to 3:00 AM period. Consequently,
20 trains will run along Mercer Slough Nature Park for up to 22 hours every day. Sound Transit
21 disclosed this information to the City in September, 2014.

22 The City Council was also unaware of the full scope and extent of vegetation
23 removal, and of the visual impacts caused by the Project. The half page narrative found in
24 Exhibit C does not depict the permanent visual and physical barrier created by choosing the
25

26 ⁵ See the Design and Mitigation Permit Application, p. 19. It is available in the August 28, 2014
Weekly Bulletin.

1 B Segment alignment, B-2M. The FEIS notes that considerable vegetation screens views
2 from Bellevue Way to the Nature Park; it characterizes the views as medium visual quality
3 with no distinctive attributes.⁶ However, the FEIS does not mention that over one-half of
4 this screening vegetation will be removed permanently and replaced with a light rail line and
5 noise walls.

6 Whatever the City Council did know about the consequences of its “approval” was
7 based on its review of the environmental documents – documents that are significantly
8 incomplete. The City Council knew Sound Transit had not given any substantive
9 consideration in the FEIS to the alternative that the City Council believed would have much
10 lesser environmental impacts to City residents and businesses, as well as to the Mercer
11 Slough Nature Park, namely alternative B-7R. In particular, Sound Transit gave no
12 consideration whatsoever to the opportunity B-7R presents to move the South Bellevue Park-
13 and-Ride facility and, thereby, restore 11 acres of the Mercer Slough. However, the City
14 Council knew that the Sound Transit Board had, with limited explanation, rejected B-7R.

15 VI. APPLICANT

16 The applicant is shown in the decision as “Ellie Ziegler, Sound Transit.”

17 VII. DECISION

18 Petitioners request vacation of the attached decision—SDP and Variance, **Exhibit B**.

19 VIII. GROUND UPON WHICH THE DECISION IS UNLAWFUL AND FACTS 20 SUPPORTING THE APPEAL

21 A. Sound Transit and the City staff misrepresented City Council actions so that
22 the SDP and Variance were treated as a *fait accompli*.

23 Sound Transit and City staff have misconstrued City Council actions, resulting in
24 permits that have not been properly evaluated under the decision criteria applicable to the
25 SDP and Variance requirements, Bellevue Land Use Code (“LUC”) 20.30R.155 and LUC

26 ⁶ FEIS, § 4.5, Visual and Aesthetic Resources.

1 20.30H.120 and 20.30H.155, respectively. The Development Services Staff Report (“Staff
2 Report”), part of the Decision, states that the East Link Project is a reasonable permitted use,
3 the alignment is allowed and the City Council has approved the Project as proposed in
4 Sound Transit’s application.⁷ The Staff Report also states that the City Council has
5 legislatively determined specifically that the elevated guideway, which requires the shoreline
6 variance, promotes and enhances the public interest. As shown above in § V and described
7 in more detail below, these statements, used to justify issuing the Permits, are incorrect.

8 1. The MOU.

9 The MOU makes clear that nothing in the agreement is intended to require the City to
10 waive its authority under GMA, SMA and SEPA. The MOU states expressly at § 8.3:
11 “Nothing in this MOU shall be deemed a waiver of the City's regulatory authority nor a
12 predetermination of the compliance of the Project with applicable codes and regulations.”
13 This statement is also found in Exhibit G to the MOU. The City did not abrogate its land use
14 approval authority by executing the MOU.

15 The Project is described in Exhibit C to the MOU, which contains a one-page
16 description of the B Segment and a general East Link Light Rail map. There is nothing in the
17 MOU that even suggests approval of the Project, its alignment, station locations, or general
18 profile. The First Amendment remains silent on City Council approval.

19 2. Resolution 8576.

20 Resolution 8576 was adopted by the City Council in April, 2013. In § 5 the
21 Resolution states that, for purposes of two sections of the LUC, the Council approves the
22

23 ⁷ See, e.g., Staff Report, p. 1 (“The Bellevue City Council has approved the East Link RLRT facility as
24 proposed, in this application.”); Staff Report, p. 13 (“These resolutions have determined that the RLRT System
25 and Facilities are reasonable and appropriate uses of the shoreline.”); Staff Report, p. 21 (“The Bellevue City
26 Council has approved the East Link RLRT facility as proposed in this application.”); Staff Report, p. 22 (“The
elevated guideway is the result of a multi-year, coordinated planning alignment and general profile of the
Project in Resolution 8578 on April 22, 2013 . . .”); Staff Report, p. 23 (“The City Council thus has legislatively
determined that the elevated guideway is a reasonable permitted use of the affected property subject to LUC
20.25M.040B.1 . . .”).

1 East Link alignment location and general profile as discussed in Exhibit C of the MOU.
2 However, Exhibit C does not contain detailed profile information. There is no explanation of
3 what approving the general profile of the B Segment means. At the most, the Council
4 approved the one-half page narrative of the profile found in the MOU. *See, Exhibit D.*

5 3. Inappropriate reliance.

6 The City relies heavily on the City Council's "approval" of the East Link facility "as
7 proposed in the Sound Transit application." However, the facility as proposed in the Sound
8 Transit application, submitted August 29, 2014,⁸ was not before the City Council. The
9 MOU, the document that was before the City Council, is not the same as the application and,
10 in comparison, has little specific detail upon which to base an approval. Resolution 8576,
11 relying as it does on Exhibit C of the MOU, cannot support approval of specific plans.

12 Rather than provide specific findings regarding the SDP and the Variance, as required
13 by law, the City instead foregoes such analysis under the justification that the location and
14 general profile have been approved. In fact, they had not been approved. The Permits should
15 be returned to the City for a comprehensive review. As it stands, the B Segment of the
16 Project will cause undesirable and, to a large extent, avoidable impacts on the shoreline, the
17 surrounding environment, and the community. Such impacts are unreasonable when a
18 feasible alternative exists.

19 B. Sound Transit and City staff did not consider the impact of the Issaquah
20 extension on the Mercer Slough Nature Park.

21 Sound Transit is planning to extend light rail to Issaquah. Why is this future planning
22 important? Because of Sound Transit's plan to cross the Mercer Slough to reach Issaquah,
23 the impacts to Mercer Slough will increase substantially. This is a functionally related
24 component of Sound Transit's long range plan. Yet, these impacts are not disclosed in the
25 Decision.

26 ⁸ Attached as **Exhibit C**.

1 Sound Transit's FEIS explains:

2 All alternatives provide opportunities for future light rail expansion consistent with
3 the Sound Transit Long-Range Plan. The Bellevue Way SE and the former BNSF
4 Railway corridor project alternatives in Segment B have been designed to allow for
5 future extensions to Issaquah with a wye junction. Kirkland and Renton are planned
6 to be served by a potential light rail extension according to the Sound Transit Long-
Range Plan. The Long-Range Plan does not envision light rail extension beyond
Downtown Redmond. (emphasis added).⁹

7 As early as January, 2010 Bellevue Councilperson (now Mayor) Balducci described
8 the likely crossing of Mercer Slough to reach Issaquah. Sound Transit plans from 2010
9 showed that the South Bellevue station and alignment were designed to accommodate a
10 future connection to Issaquah.¹⁰ The City Council noted the need for this crossing in its
11 comment letter on the DSEIS. The extension to Issaquah was certainly foreseeable.

12 Despite these facts, none of the voluminous environmental documents that Sound
13 Transit prepared¹¹ acknowledged this fact. None of the Sound Transit SEPA documents
14 include this possibility in the evaluation of environmental impacts of the B segment
15 alternatives. Indeed, Sound Transit compared the B segment alignments through Bellevue as
16 if this extension to Issaquah would never occur, with the result that impacts from the
17 alternatives located west of Mercer Slough were significantly understated and the impacts of
18 the alternative located east of Mercer Slough were exaggerated. The EISs assume that only
19 one of the B segment alternative alignments – the former BNSF Railway corridor, known as
20 B-7 and B-7R (an iteration developed by the City) – would result in such a crossing. The
21 result is that the environmental analysis is not only woefully incomplete, it is deliberately
22 skewed.

23 When challenged in Federal Court, Sound Transit successfully and disingenuously
24 argued that the Issaquah extension was too speculative to be studied. With no explanation,

25 ⁹ FEIS, Chapter 7, common comment CC2e, p. 7-22.

26 ¹⁰ While this notation was removed from subsequent drawings, the plans remain the same.

¹¹ DEIS; DSEIS; and FEIS.

1 Sound Transit included the Federal Court Order in its shoreline permit applications. In
2 hindsight, there is little wonder why.

3 Sound Transit's September, 2014 Corridor Report and November, 2014 Regional
4 Long-Range Plan Update show clearly that Sound Transit plans to connect the South
5 Bellevue Station to Issaquah. The "Current Plan Alternative" includes the Bellevue to
6 Issaquah extension as Corridor C, which is described as "a rail extension corridor along I-90
7 from Bellevue to Issaquah." This means, in all likelihood, Sound Transit intends to cross
8 Mercer Slough near the I-90 corridor. While the Report shows circuitous alternatives
9 through Bellevue to make the Issaquah connection, including one that runs along I-405, the
10 most direct route is from the South Bellevue Station.

11 The City justifies its decision to approve the Variance by stating the City and Sound
12 Transit have engaged in a multi-year, coordinated planning effort. This is not relevant to the
13 criteria for evaluating the Permits. The City and Department of Ecology should have
14 considered the need for the Issaquah extension in its review of the Variance, because an
15 alternative (B-7 or B-7R) would make the variance unnecessary. The B-7 route travels
16 across Mercer Slough in the same alignment as the Issaquah extension and travels north
17 parallel to I-405 to reach Downtown Bellevue. However, the major difference between the B
18 segment chosen and B-7/B-7R is that there is no need to locate the south Bellevue station and
19 guideway in Mercer Slough and hence, no need for the requested variance. Further, the B-7R
20 alignment includes removal of the existing park-and-ride facility. No environmental
21 document considers this very significant environmental benefit of B-7R – 11 acres restored
22 to urban wetlands and removal of a major unnatural intrusion in the Nature Park.

23 C. The Shoreline SDP and Variance have been impermissibly piecemealed.

24 1. Guiding principles.

25 Several principles pertain. First, the SMA is to be liberally construed to give full
26

1 effect to its purpose and objectives.¹² The overarching purpose of the SMA is to protect the
2 state shorelines as fully as possible.¹³ Consistent with that purpose and the broad regulatory
3 reach of the statute, a shoreline permit should describe the full, unified, and integrated
4 physical project, both within and without the shorelines of the state.¹⁴ Second, the SMA
5 directs local and state governments to prevent the inherent harm of piecemeal development
6 of the state's shorelines.¹⁵ Third, the Mercer Slough is a shoreline of statewide significance.

7 2. The concerns underlying the prohibition on piecemealing.

8 In addition to the directive in RCW 90.58.020 discussed above, the Shorelines
9 Hearings Board ("SHB") has enunciated three separate concerns falling under the issue of
10 piecemealing: (1) the desire for the totality of identified projects constructed within the
11 shoreline to be reviewed comprehensively and simultaneously under the SMA and its
12 regulations; (2) the coercive effect the construction of one segment of a project would have
13 upon another part of the project; and (3) the potential that a particular development will serve
14 as a detrimental precedent for later development.¹⁶ The Sound Transit applications embody
15 all three concerns.

16 3. The Permits do not address the impacts of the totality of the Project on
17 the shoreline.

18 A proposed development, such as the East Link, that includes both shoreland and
19 uplands is properly reviewed in its entirety for consistency with the SMA.¹⁷ The SMA
20 review is limited to those portions of a proposed development that lie within the shoreland as
21 defined under RCW 90.58.030 and those portions of a project that may have adverse impacts

22 ¹² RCW 90.58.900.

23 ¹³ *Laccinole v. City of Bellevue*, SHB No. 03-025 (Order Granting Summary Judgment and Order of
24 Remand), citing *Buechel v. Ecology*, 125 Wn. 2d 196, 203, 884 P. 2d 910 (1984).

25 ¹⁴ *Laccinole*, *supra*.

26 ¹⁵ RCW 90.58.020.

¹⁶ *Manza v. City of Lakewood* (FFF), SHB No. 02-005; *Laccinole*, *supra*; *Rossellini et al v. City of Bellingham*, SHB No. 08-003 (Order on Motions for Partial Summary Judgment) (2008).

¹⁷ *Laccinole*, *supra*; *Citizens for Natural Habitat v. Snohomish County* (FFF), SHB No. 00-009 (2000), citing *Merkel v. Port of Brownsville*, 8 Wn.App. 844 (1973).

1 on the shoreline.¹⁸ It is critical that there be an assessment of the cumulative impact of the
2 entire project under shoreline policies and regulations.¹⁹ Only if this assessment occurs can
3 the local government and Department of Ecology determine to what extent those portions of
4 the project outside the shoreline may adversely impact shorelines of the state.

5 In its applications, Sound Transit intentionally piecemealed the proposal, and the City
6 has, for inexplicable reasons, gone along without objection. The Staff Report explains:

7 **Limitation on Permit Scope**

8 By definition, this application for shoreline substantial development permit includes
9 all impacts to critical areas, wetlands and buffers contained within the 200 foot
10 jurisdictional area plus associated wetlands. Elements of the East Link RLRT project
11 not located within the Shoreline Overlay District are subject to permit review and
12 approval under City Light Rail Overlay District requirements (LUC 20.25M).
13 (emphasis added).

14 ...

15 Due to the narrow scope of work in the shoreline, and the difference in process
16 requirements, Design and Mitigation permits are processed separately from this
17 shoreline permit application.²⁰

18 Petitioners are mindful of the fact that the SDP requires that Sound Transit obtain the
19 referenced Design and Mitigation Permit (“DMP”) before issuance of any construction
20 permit for each of the project design contract packages. However, the DMP does not insure
21 that the impacts of those portions of the East Link project located outside of the shoreline
22 jurisdiction are reviewed for impacts on the shoreline and that those impacts are properly
23 mitigated. That is the very function of shoreline permits. Further, the DMP is not required to
24 include construction time period mitigation.

25 **4. The coercive effect is plainly evident.**

26 In granting a stay of the effectiveness of a § 401 water quality certification, the PCHB
commented:

¹⁸ *Citizens for Natural Habitat*, citing *Weyerhaeuser v. King County*, 91 Wn. 2d 271 (1979).

¹⁹ *Luce et. al. v. City of Snoqualmie and Northwest Railway Museum*, SHB No. 00-034
(2001)(“*Luce*”), citing *Hayes v. Yount*, 87. Wn. 2d 280, 284 (1976).

²⁰ Staff Report, pp. 2, 5.

1 Over the years, the Washington courts have commented on the coercive effect the
2 issuance of a permit for one segment of a project on the permits for another segment.
3 The Board will avoid its proceedings becoming suspect for the potential fait accompli
4 that may occur in such circumstances. (Citations omitted).²¹

5 The Decision's characterization of the effect of Resolution 8576 (discussed above)
6 demonstrates the coercive effect of prior decisions on East Link. Further, will the location of
7 the South Bellevue station be used to justify crossing the Mercer Slough Nature Park to reach
8 Issaquah? Will the location be used to establish a Transit Oriented Development near the
9 station?

10 5. The precedential effect is plainly evident.

11 As explained above, the chosen B Segment alignment was designed to allow a future
12 extension to Issaquah from the South Bellevue Station. Such an extension must cross Mercer
13 Slough. Approval of the Permits will create a precedent for approval of that extension and
14 crossing.

15 D. The SDP does not comply with the SMP.

16 The B Segment does not comply with the SMP in multiple ways, including, but not
17 limited to:

18 1. LUC 20.25E.060.

19 LUC 20.25E.060 sets out the requirements for use regulations and policies governing
20 shoreline permits, including compliance with LUC 20.25E.080. The B Segment fails to
21 comply with LUC 20.25E.080 as set forth below and, thus, fails to comply with LUC
22 20.25E.060.

23 ²¹ *Airport Communities Coalition v. Ecology*, PCHB No. 01-160 (2001) (Order Granting Stay). See
24 also, *Apple tree Cove Protection Fund v. Kitsap County*, SHB No. 93-55 (1994) (observing that "fractionated"
25 review can lead to significant questions about impacts that were not addressed) and *Luce, supra* (the choice to
26 proceed with shoreline permits in advance of other permits (rather than consolidating them) may place the
applicant at risk of the SHB not being able to determine whether conditions would assure that a proposal is
consistent with the SMA).

1 2. LUC 20.25E.080(B)(3).

2 LUC 20.25E.080 sets forth the Shoreline Performance Standards, which are not met
3 specifically regarding landfill, avoidance measures for soil erosion, a plan for preserving
4 shoreline vegetation, a plan for control of erosion during and following construction, and
5 new parking structures.

6 3. LUC 20.25.080(K)(3).

7 LUC 20.25.080(K)(3) expressly prohibits landfill unless the proposal falls within one
8 of nine specified exceptions. Sound Transit proposes five areas of landfill within the
9 shoreline jurisdiction. None of the exceptions apply. The B Segment fails to comply with
10 LUC 20.25E.080(K)(3).

11 4. LUC 20.25E.080(R)(3).

12 The South Bellevue Station parking structure is unquestionably new. The SMP
13 prohibits new parking structures within the 50-foot shoreline critical area buffer.²² Neither
14 the Permits nor Sound Transit's SDP Narrative identifies the distance of the parking structure
15 from the edge of the Mercer Slough wetland. It is impossible to determine if the parking
16 structure conforms to the SMP from how the station is depicted in Figure 107.²³ To the
17 extent that the parking structure is located within the critical area buffer, the B Segment fails
18 to comply with LUC 20.25E.080(R)(3).

19 5. Shoreline Policies.

20 The Decision fails to properly consider and apply the following Shoreline Use and
21 Activity Policies:

- 22 • SH-1: The City found consistency with SH-1 based upon Resolution 8576,
23 finding that the City Council approved the alignment location and general profile
24 of the East Link Project and that such actions have determined that the RLRT

25 ²² LUC 20.25E.080(R)(3)(prohibiting new parking structures in the buffer); LUC
26 20.25H.035(A)(requiring a 50 foot shoreline critical area buffer on undeveloped sites); LUC
20.25H.115(B)(1)(the site is considered "undeveloped" because there is no primary structure).

²³ See, Attachment 1 to the SDP Narrative in Exhibit C.

1 system and Facilities are reasonable and appropriate uses of the shoreline.²⁴ As
2 discussed above, this is inaccurate. Resolution 8576 does not even mention the
3 shoreline. There has been no determination by the City of Bellevue that the
4 RLRT System and Facilities as presented in the application is a reasonable and
appropriate use of the shoreline. Neither the City nor Sound Transit has
addressed the proper balance of the environmental needs, the public interest, and
private property.

- 5 • SH-2: The City found that no long-term adverse effects on the shoreline are
6 anticipated and that all permanent impacts within the shoreline will be mitigated.
7 But the underlying application demonstrates that there will be a permanent impact
8 to a wide swath of the Mercer Slough Nature Park and Sound Transit has yet to
9 obtain the DMP. Moreover, recently discovered changes to the proposal and new
10 information indicate that the Project is likely to have significant adverse impacts
11 on the shoreline and on many elements of the environment. Further, the
12 environmental documents provide only minimal information on the noise, light
13 and glare, and visual impacts of the B Segment on the Nature Park. The City's
14 finding of compliance with SH-2 is unfounded.
- 15 • SH-3: The B Segment does not improve the shoreline, is not compatible with the
16 shoreline's natural amenities, and is not dependent upon a shoreline location. The
17 City again relies upon the assumed import of prior City Council actions, finding
18 compliance with SH-3: "The use and alignment have been approved by both the
19 City Council and the Sound Transit Board and represents [sic] a compromise and
balancing of regional and local policy objectives that sought to avoid wetland
impacts to the greatest extent possible." The finding of compliance with SH-3 is
unfounded.
- 20 • SH-6: To find compliance, the City relies on LUC Part 20.25M, the Light Rail
21 Overlay, and the DMP. However, the City has not incorporated LUC Part
22 20.25M into its SMP. It provides no basis for finding compliance with SH-6.
23 Nor has it approved the DMP. Moreover, the City is removing more than 1,200
24 trees along the western border of the Mercer Slough Nature Park.
- 25 • SH-8: The City simply asserts that "the Project...will mitigate all adverse
26 impacts." This conclusion is fairly astonishing. As Petitioners discuss
throughout this Petition, many elements of the environment and the shoreline will
suffer unmitigated impacts and the impact assessment that has been completed
has been limited intentionally.
- SH-9/12/13: The City asserts that "all impacts will be mitigated within the
Mercer Slough wetland complex. There will be no net loss of ecological
functions. No long term adverse effects to the natural amenities and resources of
the shoreline are anticipated." Sound Transit's environmental documents either

²⁴ The discussion of the Shoreline Policies is found in the Staff Report, pp. 13-20.

believe these claims or contain insufficient analysis to support the City's assertion.

- SH-15: Pursuant to this policy, landfill should be discouraged and allowed only with a demonstration of no other practical alternatives, no net reduction of surface waters, and no significant adverse impact to fish, wildlife, and adjacent property. The proposal includes five areas of landfill which should not be allowed because there is a feasible alternative which eliminates 11 acres of existing fill in the Mercer Slough.
- SH-17: The City erroneously finds that the alignment must cross through the Mercer Slough wetland system, streams, and impact the system buffer.
- SH-18: This Policy calls for preserving the open character of Mercer Slough. The City improperly relies on prior City Council actions in finding compliance. It also erroneously concludes that the only permanent impact to the shoreline/wetland areas of the Slough are the boardwalk and 8,700 square feet along the edges of the wetland.
- SH-19/43: The B Segment does not make provisions to maintain an optimum water flow and water quality in Mercer Slough and the Mercer Slough Canal.
- SH-27: This policy seeks to preserve and enhance views of the shoreline from public areas. The City finds that efforts have been made to preserve and enhance the views of the shoreline and water from public areas, with tree removal kept to a minimum. Again, this finding is astonishing. The train line will establish a permanent barrier to the extensive wildlife and human crossings into and from Mercer Slough, and complete blockage of all views of the Slough from all points west of the rail line facility. Moreover, the Project requires the taking of more than 1,200 trees along the western edge of Mercer Slough, which will not be replaced. The Project also may require the complete scraping of adjacent wetlands, wetland buffer, and other surface areas lying as much as 100 to 150 feet eastward from Bellevue Way.²⁵ The station, 5-story parking garage, and elevated guideway will be visually prominent, marring the entrance to the Mercer Slough Nature Park and Winters House.
- SH-28/29/31: The B Segment does not increase or give priority to recreational activities, expand recreational activities, or encourage passive forms of open space recreation. All can agree that the priority for the Project is not recreational activity. It will significantly impact access to the Nature Park during its 6-year construction period and enjoyment of the Nature Park thereafter during operations. The Winters House will have to be closed for the 6-year construction period. The boardwalk will increase recreational activity only incrementally while trains rush by every 7-9 minutes for 20-22 hours/day.

²⁵ 90% Design Drawings, Contract E320, L85-TMP-201 through -205.

1 6. SMP Amendments.

2 City staff have asked the City Council to adopt amendments to the Planning
3 Commission's recommended SMP Update specifically for Sound Transit. Why are these
4 amendments being requested after the City has approved the SDP and Variance?

5 E. Sound Transit has not demonstrated that the criteria for the granting of a
6 variance have been met.

7 The principal purpose of the SMA's height restriction is to protect views. Sound
8 Transit seeks a variance from the 35-foot height limit in LUC 20.25E.080(B)(5). It is Sound
9 Transit's burden to demonstrate satisfaction of the variance criteria. It has not done so.

10 1. "Analysis" of criteria A-C and G improperly rely on the assumed
11 import of the MOU and Resolution 8576.

12 In finding compliance with LUC 2020.H.155(A)-(C) and (G), the City relied heavily
13 on the assumed import of the "City Council's approval of the alignment and general profile
14 of the Project in Resolution 8576 . . ." rather than performing the analysis required by law.²⁶
15 The Decision also concludes: the City Council has "determined, in effect, that the elevated
16 guideway promotes and enhances the public interest" and that Council through Resolution
17 8576 "legislatively determined that the elevated guideway is a reasonable permitted use of
18 the affected property subject to LUC 20.25M.040B.1."²⁷ As explained above, the Resolution
19 approves the East Link alignment location and general profile as discussed in Exhibit C of
20 the MOU. Exhibit C does not contain detailed profile information. Therefore, Resolution
21 8576 provides no basis for a finding of compliance with these variance criteria.

22 The Decision acknowledges that the elevated guideway detrimentally affects the
23 visual environment, vegetation, and the historic Winters House. The Decision finds these
24 detrimental effects overwhelmed by the public interest determination it erroneously reads
25 into prior City Council actions. Thus, the balance between the detrimental effects and the

26 ²⁶ Staff Report, p. 22.

²⁷ Staff Report, pp. 22, 23.

1 public interest has not been appropriately addressed and weighed.

2 Simply put, the City Council did not make a legislative determination that the
3 elevated guideway is a reasonable permitted use of the affected property. Assertions that
4 there are no meaningful adverse effects to the shoreline environment from the additional
5 height are not supported by specific findings in the Decision or Staff Report.

6 2. Criterion E.

7 The City's finding regarding this criterion relies upon the DMP which has not been
8 approved. Despite this lack of analysis, the City baldly asserts that the design will have "no
9 meaningful adverse impacts to adjacent properties or the shoreline environment designation."
10 As discussed in this Petition, Sound Transit's environmental documents belie this claim.

11 F. New information shows the Project will have more significant impacts on the
12 historic Winters House than was disclosed in the environmental documents.

13 The F. W. Winters House is Bellevue's only building and surrounding grounds on the
14 National Register of Historic Places ("NRHP"). Pursuant to its inclusion in the NRHP, the
15 Winters House must be used as a public meeting and local historical society facility which
16 will also serve to interpret both the natural and the cultural history of Mercer Slough.
17 According to Sound Transit's Winters House Landscape Report, this restriction requires that
18 any landscape design surrounding the house must consider the history of the house and
19 reflect the cultural and horticultural past of the house and its surroundings. The house and its
20 location at the edge of Mercer Slough are considered key links to the City's agricultural
21 history.

22 Petitioners have learned that problems in the original Sound Transit design near the
23 Winters House were recently discovered. The current proposal is to erect a 25-foot deep
24 concrete lined trench at the doorstep of the Winters House to aid in soil and water control.
25 Such a trench with six foot-high braided steel fences on the top so close to the historic house
26 is incompatible with the history and the cultural past of the house, especially considering the

1 fact that the house was oriented for the views of the fields and the barrier would be in view.
2 As such, the proposal violates the mandate of the Winters House to serve as a demonstration
3 of the cultural history of Mercer Slough.

4 Under the SMP, the City is required to weigh the various public interests in its
5 analysis of whether or not a SDP and/or height variance is appropriate.²⁸ This significant
6 impact upon the public interest must be addressed prior to issuance of shoreline permits.

7 G. Shoreline impacts have been ignored or discounted because the City staff
8 treated the Project as having been approved by the City Council.

9 For ease of discussion, this Section of the Petition discusses the adverse impacts of
10 the Project disclosed in the FEIS as well as impacts that will result from subsequent revisions
11 to the Project and/or new information which indicates significant adverse impacts of the
12 Project on the shoreline.

13 1. Construction and operational impacts on fish and wildlife as well as
14 human users of Mercer Slough Nature Park.

15 Sound Transit acknowledges that the Mercer Slough Nature Park is a regional as well
16 as a local resource. It defines the entrance and the context for South Bellevue.²⁹ It is a
17 unique, functioning, natural ecosystem in an urban setting. Yet, Sound Transit's analyses
18 ignore significant adverse construction and operational impacts on the users of Mercer
19 Slough – fish and wildlife as well as human. Below are just a few examples of these
20 impacts.

21 The City impermissibly discounts the Project's significant impacts to Mercer Slough,
22 and Sound Transit's failure to adequately minimize or mitigate those significant impacts.
23 The City justifies its actions by asserting that the "approved alignment" effectively requires
24 that the City accept and permit both the chosen B-2M alignment and the unavoidable impacts
25 occasioned by the B-2M alignment.³⁰

26 ²⁸ See, e.g., RCW 90.58.020.

²⁹ FEIS, p. D-53.

³⁰ See, e.g., Staff Report, pp. 6-7, § III ("Impacts within all areas have been minimized to the largest

1 The FEIS demonstrates that the Project will have permanent impacts on high-value
2 habitat and associated wildlife.³¹ Habitat that supports breeding, foraging, and roosting will
3 be removed, which may disturb or displace some wildlife species.³² The FEIS indicates that
4 existing high-quality forest-dominated vegetation and wildlife habitat under and within 20
5 feet on each side of the elevated guideways will be permanently removed, replaced with
6 shrub and short-tree habitat.³³ The Project will cause a linear disruption of habitat integrity,
7 and small, interconnected habitats presently supporting wildlife (including priority species)
8 will be disconnected, increasing habitat fragmentation and permanently disrupting wildlife
9 movement between habitat types.³⁴ Since the publication of the FEIS, Petitioners have
10 learned that an 8 to 10 foot high sound wall and fencing on the top of the rail line trench will
11 block movement into and out of the Slough from the west, exacerbating these impacts.

12 As Petitioners already have noted above, the City's contention that there is an
13 agreement regarding the alignment, and that such agreement usurps the City's decision-
14 making authority under the City's SMP and SEPA, is not supported by the law or the facts.
15 Consequently, the City's assessment of the impacts to Mercer Slough that will be caused by
16 the SDP and Variance is fundamentally flawed, and its determination regarding the
17 acceptability of those impacts is error.

18 Additionally, the 90% drawings now include a massive system of groundwater
19 dispersal culverts, drainage ditches, subterranean water holding tanks, and filtering systems
20 designed to collect and then disperse water collected in the base of the rail line trench in front
21 of the Winters House, and all along other sections of the rail line, onto the surface of the
22 Mercer Slough. The impacts have not been disclosed and were not considered in the Permits.

23
24 extent possible; however, *due to the approved alignment*, reconfiguration of existing roadway infrastructure and
the Winters House parking area *are unavoidable.*") (emphasis added).

25 ³¹ FEIS, § 4.8.3.2, p. 4.8-15.

26 ³² *Id.*

³³ *Id.*

³⁴ *Id.*

1 (a) Noise Impacts.

2 The 2011 East Link EIS noise analysis projected that the light rail noise along
3 Bellevue Way will be 66 dBA. The 2014 *Noise Impact Assessment Using Bellevue City*
4 *Code – Operations*³⁵ measured sound levels for existing ST Central Link light-rail operations
5 on an at-grade, ballast-and-tie track and on direct-fixation track on an aerial structure, and
6 showed maximum noise levels from the light rail vehicle to be much higher than that – 79
7 dBA at 50 feet and 40 mph.³⁶ Ambient (L_{eq}) noise levels are 50-61 dBA. Sound Transit is
8 seeking an exception to the maximum noise limits in the early morning hours. A noise
9 barrier will be located on the west side of the alignment, adjacent to Bellevue Way. Only six
10 noise stations were used to assess noise impacts to the Nature Park. No measurements were
11 taken near the proposed station.³⁷

12 No noise mitigation is proposed or required for the Slough or Nature Park. Lacking
13 any support, Sound Transit asserts that operational noise impacts on wildlife “would be
14 relatively minor compared with existing traffic noise” and “would not likely adversely
15 impact wildlife” because the wildlife “are more or less accustomed to some level of existing
16 human and vehicular activity.”³⁸ There is nothing to support the contention that the nature
17 and extent of link light rail operational noise will have the same impacts on wildlife as the
18 existing road noise to which resident populations have become accustomed. And, indeed, the
19 2014 Noise Impact Assessment shows that light rail operational noise levels will actually
20 exceed the continuous noise of a busy freeway at 100 feet³⁹ – noise levels that will likely
21 disturb resident wildlife and interfere with their nesting, foraging, resting, and migration.⁴⁰

22 ³⁵ Attachment T to the June 20, 2014 South Bellevue Design and Mitigation Permit Application for
23 East Link Light Rail Project From I-90 to SE 4th Street, including South Bellevue Station.

24 ³⁶ 2014 Noise Impact Assessment, p. 6.

25 ³⁷ FEIS, Appendix G.

26 ³⁸ FEIS, § 4.8.3.2, p. 4.8-15.

³⁹ 2014 Noise Impact Assessment, p. 18.

⁴⁰ Yet the Critical Areas Report submitted with the applications states:

Operational impacts on wildlife and habitat communities and species of local importance associated with the Project would be minor and related principally to ambient noise levels associated with light

1 Noise and construction activity will “temporarily” displace wildlife in the Nature
2 Park because construction noise will extend into the parklands⁴¹ – compounded by the
3 removal of trees and vegetation that presently shield the Nature Park and wildlife from road
4 noise. Noise from light rail construction can range from 80 to 94 dBA, and pile driving
5 could produce noise levels of 105 to 110 dBA.⁴² Loud noises from short-term events
6 associated with construction activities can startle nearby wildlife and agitate birds,⁴³
7 impacting nesting, foraging, and feeding activities that are critical for survival.

8 Sound Transit acknowledges that there are no comparable temporary replacement
9 habitats in the Project vicinity.⁴⁴ For that reason, and given the 6-year construction time
10 period, the impacts from construction activities may be permanent, rather than temporary, as
11 mobile species move to adjacent areas where they may not survive because of the absence of
12 suitable and available habitat; and species that are less mobile or retreat to burrows fail to
13 survive.⁴⁵ Construction noises during the spring could interfere with the western toad’s
14 ability to hear mating and alarm calls and disrupt its reproduction or survival.⁴⁶ Other
15 species in the high-value habitat that may be impacted include bald eagles, pileated
16 woodpeckers, green herons, and willow flycatchers, which Sound Transit acknowledges are
17 all relatively sensitive to human disturbance and habitat alteration.⁴⁷

18 Another factor that the SDP and Variance fail to explain is whether the noise
19 assumptions took into account the removal of trees and other vegetation that presently act to
20 reduce noise around Mercer Slough or the impacts on noise levels in the Nature Park from
21

22 rail use in a populated urban area. The Project area has been occupied with roads and residential and
23 commercial development for several decades. Noise levels associated with operation of the light rail
after construction are expected to be consistent with current ambient noise levels. (emphasis added).

24 ⁴¹ *Id.*

25 ⁴² *Id.* p. 4.8-24.

26 ⁴³ *Id.*

⁴⁴ *Id.* p. 4.8-27.

⁴⁵ FEIS, § 4.8.3.3. pp. 4.8-23 and 4.824.

⁴⁶ FEIS, § 4.8.3.3, p. 4.8-27.

⁴⁷ *Id.*

1 the noise barriers. Finally, there is little to no assessment or discussion of construction noise
2 and its impacts on wildlife over the projected 6-year span of construction. Sound Transit
3 expects to release its construction noise report in the first quarter of 2015, months after the
4 shoreline permits were approved.⁴⁸

5 Sound Transit underestimates the noise impacts of Project construction and
6 operations, and the City issued the SDP and Variance based on inaccurate and inadequate
7 information.

8 (b) Loss of trees and vegetation.

9 The B-2M alignment will permanently affect 0.6 and 0.7 acres of high-value habitat
10 (all deciduous forest), including the removal of mature deciduous trees near the Bellevue
11 Way SE and 112th Avenue SE intersection.⁴⁹ The loss of trees can affect an entire
12 ecosystem, even outside the local area, and the SDP and Variance fail to acknowledge the
13 actual and far-reaching impacts that the removal of mature trees will have.

14 Not discussed in the SDP and Variance is the fact that over 1,200 trees along the
15 Nature Park's western perimeter along Bellevue Way will be cut down. Sound Transit
16 contends that the City will regulate the tree loss through the DMP and that trees which "must
17 be removed" – because of the "approved alignment" – will be replaced. Mature trees are
18 more valuable to an ecosystem than immature trees. Therefore, replacement of mature trees
19 with immature trees does not repair the harm that has been done, nor does it account for the
20 loss to the ecosystem.⁵⁰ Also not discussed is the fact that B-2M may require the complete
21 scraping of adjacent wetlands, wetland buffer, and other surface areas lying as much as 100
22 to 150 feet eastward from Bellevue Way.

23
24 ⁴⁸ Minutes of Light Rail Advisory Committee November 19, 2014 meeting, p. 5 (Justin Lacson, Sound
Transit).

25 ⁴⁹ FEIS, § 4.8.3.2, p. 4.8-19.

26 ⁵⁰ Muckleshoot Tribe's comments on DEIS, Appendix J to FEIS, at page 9 ("... [R]eplacing larger
trees (i.e., 4 inches in diameter or greater) with 1 or 2 gallon sized trees does not address the temporal loss of
tree growth due to the differences in tree sizes.").

1 Alignment B-2M will also “temporarily” impact 1.0 to 1.1 acres of high-value
2 deciduous forest habitat, including the removal of some mature deciduous trees near the
3 Bellevue Way SE and 112th Avenue SE intersection.⁵¹

4 Almost 60% of all significant trees surveyed in Mercer Slough Nature Park will need
5 to be removed for the Project – 1,279 trees.⁵² Almost one-half of the trees to be removed are
6 in a critical area or critical area buffer. Over one-half of the trees to be removed are in the
7 Shoreline Overlay District. As discussed above, tree removal has significant adverse
8 environmental impacts not disclosed in the environmental documents. Their removal does
9 not comply with the SMP.

10 The Tree Preservation Analysis states that the areas needed for construction access
11 and staging have been included in the vegetation removal zone.⁵³ The 90% drawings show a
12 work zone in which all vegetation, at the option of the selected contractor, will be removed.
13 No analysis submitted to the City has confirmed that the removal zone used for the survey
14 and the work shown in the 90% drawings is coextensive. Regardless, the tree survey does
15 not identify all of the vegetation that will be removed for the Project.

16 The FEIS describes the vegetation removal zone as 35 feet on either side of the
17 guideway.⁵⁴ The FEIS fails to mention that the 30-foot guideway will also require complete
18 vegetation removal. The FEIS states that the Project will simply require some removal of
19 deciduous trees.⁵⁵ We now know from the Tree Preservation Analysis that the tree removal
20 area will actually be 64 feet from the centerline of the guideway on each side of the
21 guideway⁵⁶ – a much larger removal zone than described in the FEIS. Further, the 90%
22 design depicts a work zone that appears to be even larger.

23 ⁵¹ FEIS, § 4.8.3.3, p. 4.8-27.

24 ⁵² September 23, 2014 Analysis of Tree Preservation received by Permit Processing on September 30,
2014.

25 ⁵³ 90% Design Drawing, L85-TMP-201 through -205.

26 ⁵⁴ FEIS, Ecosystem Technical Report, p. 100.

⁵⁵ FEIS, Ecosystem Chapter, p. 27.

⁵⁶ September 23, 2014 Analysis of Tree Preservation.

1 It was not until October 15, 2014 that the City and Sound Transit disclosed the full
2 extent of vegetation removal. This disclosure occurred through a presentation to the CAC.⁵⁷
3 The tree removal area described in the presentation is larger than described in either the Tree
4 Removal Analysis or the FEIS. This presentation occurred just two weeks before the City's
5 Decision and obviously was not available for public comment until after the public comment
6 period closed.

7 (c) Loss of Wetlands.

8 Sound Transit projects that the Bellevue Way SE impacts within the Shoreline
9 Overlay District will cause permanent wetland impact to an area of .19 acre, permanent
10 wetland conversion of .38 acre, and temporary wetland impact to .30 acre. The FEIS defines
11 the temporary wetland impacts as construction-related impacts between the permanent
12 project right-of-way and the construction areas.⁵⁸

13 Using the standards that the Washington State Department of Transportation
14 ("WSDOT"), Department of Ecology, and the Army Corps of Engineers have established
15 for major highway projects, any construction that lasts for more than one growing season is
16 considered permanent from the perspective of what compensatory mitigation must be
17 provided.⁵⁹ Construction for the Project is projected to last 6 years. For that reason, the
18 construction-related impacts to Mercer Slough should have been treated as permanent, not
19 temporary, necessitating a more accurate assessment of the permanent impacts that will
20 result from this SDP and Variance.

21 (d) Impacts on Salmon.

22 The City's Environmental Scientist/Watershed Planning Supervisor, Kit Paulson,
23 described the salmon populations that use Mercer Slough for spawning and migration:
24

25 ⁵⁷ Power Point presentation, October 15, 2014.

⁵⁸ FEIS, § 4.8.3, p. 4.8-13.

26 ⁵⁹ August 23, 2010 Memorandum From Dyanne Sheldon, Otak, to Michael Paine and Kate Berens Re:
Analysis of Potential Impacts from Sound Transit on Mercer Slough, p. 5.

1 Mercer Slough is the mouth of the greater Kelsey Basin, which comprises
2 the primary salmon spawning area within Bellevue. Chinook, sockeye,
3 and coho salmon as well as cutthroat and rainbow trout use the main
4 channel of Mercer Slough for migration. The Slough is the gateway to the
5 Kelsey Basin, the primary spawning streams of Bellevue. Kelsey chinook
6 are part of the Sammamish population and are considered important for
7 the survival of the population even though Kelsey is not a core spawning
8 area. Adult salmon are found in Mercer Slough from late August until
9 December, adult trout can be found in the Slough all year. Juvenile
10 salmon use of the Slough is unknown. It is presumed that a small portion
11 of the juvenile chinook salmon could migrate January through March to
12 the lake to rear. These juvenile would seek shallow shoreline habitats,
which are limited in the Slough. Chinook, coho, sockeye, cutthroat trout,
rainbow trout, and historically steelhead have been known to spawn in
Kelsey Basin waters. Adult salmon use the main channel of Mercer
Slough for migration in late summer, avoiding the warmer secondary
channel to the east of Bellefields Office Park. The main channel is the
access point for salmon returning from Lake Washington and Puget
Sound. Juvenile salmon use of the main and secondary channels is largely
unknown.⁶⁰

13 Based on these known and suspected uses of the Slough by adult and juvenile salmon
14 populations, and adult trout, the B-2M alignment will directly impact those populations
15 during construction and throughout the life of the Project through erosion and turbidity
16 impacts to water quality, the loss of shoreline vegetation, bank hardening and other habitat
17 modifications, and disturbance to juvenile salmon rearing and winter trout habitat.⁶¹ The B-
18 2M alignment also “has the potential to impact the secondary channel buffer of Mercer
19 Slough. Impacts to this area may affect a portion of the small percentage of Kelsey Basin
20 chinook juveniles that exhibit a lake-rearing life history and migrate into the secondary
21 channel of Mercer Slough,” and “may affect winter use by adult trout...”⁶²

22 The B-2M alignment will also indirectly impact salmon and trout populations.
23 Impacts to wetlands and buffers will detrimentally affect shading and temperature; reduce

24 ⁶⁰ July 13, 2010 Technical Memorandum from Kit Paulson to Bellevue City Council and Denny
25 Vidmar Re: What are the Relative Impacts of the Two Light Rail Alignments (B7 and B2M) on Salmon? pp. 2-
26 3.

⁶¹ *Id.*, p. 6.

⁶² *Id.*

1 organic debris available for food and habitat; decrease filtering of pollutants; and interfere
2 with other beneficial functions.⁶³

3 Mercer Slough is within the treaty-protected usual and accustomed fishing area of the
4 Muckleshoot Tribe ("Tribe"). The Tribe generally fishes beginning in July and continuing
5 through December in various locations in the Ship Canal, Lake Washington, and Lake
6 Sammamish.⁶⁴

7 (e) Lighting Impacts.

8 Lighting will also create an impact. Yet, when the CAC expressed a concern, Sound
9 Transit dismissed it with the following statement:

10 Bellevue Way and I-90 are lit today and have been for motorist safety for decades.
11 The park and ride has also been lit since its construction in 1970's. The station and
12 garage are not expected to cause any additional impacts to wildlife than these
13 structures currently located within the slough. The completed FEIS and associated
14 ROD found no significant operational impact on listed species due to lighting.⁶⁵
(emphasis added).

15 It is simply incredible that Sound Transit argues an elevated guideway for which a
16 height variance is required and 5-story parking structure will have no greater impacts than
17 Bellevue Way and the current park-and-ride, which are both at grade.

18 (f) Other Construction Impacts.

19 The EISs deferred any meaningful analysis of construction impacts to the permitting
20 stage. Unfortunately, that analysis did not accompany the shoreline permits. So, the City
21 issued the permits with no mitigation for 6 years of construction impacts (7 years if one adds
22 the City related project).

23 (g) Interruption of Groundwater Flow.

24 One of the critical concerns for maintaining the health of Mercer Slough is
25 maintaining groundwater flow under Bellevue Way. There is no discussion in the Decision

26 ⁶³ *Id.*

⁶⁴ Muckleshoot Tribe's comments on DEIS, Appendix J to FEIS.

⁶⁵ ST Responses to South Bellevue Segment Pre-Development Review May 13, 2014, p. 3.

1 regarding this environmental impact. Yet, the City Council was concerned and, on
2 December 8, 2014, directed the City Manager to report back on groundwater interception
3 impacts. This impact is unique to the proposed B Segment route and would not occur with
4 B-7 or B-7R.

5 (h) Recreational Use of Mercer Slough Nature Park.

6 The B-2M alternative runs through 3,110 lineal feet of the Mercer Slough Nature
7 Park. The FEIS disclosed that B-2M will require removing trees and shrubs along a 30-50
8 foot wide, 3,200-foot long swath of the Nature Park's western boundary.⁶⁶ We now know
9 that it will require clearing of a much wider 100-foot swath along this length. Of all of the
10 alternatives studied, only B-2M will likely require the closing of the Periphery Loop Trail
11 during construction and cut off access to trails north of the South Bellevue Park-and-Ride.⁶⁷
12 Parking used by visitors would also be closed along the west side of the Nature Park during
13 construction.⁶⁸ Overall, the B-2M alternative creates 2.9 acres of permanent impact and 3.6
14 acres of an up to six year construction impact to the Nature Park. As mentioned above,
15 Sound Transit mistakenly considers the construction impact "temporary."

16 (i) Conversion of Mercer Slough Nature Park.

17 As shown on **Exhibit E**, substantial portions of the Nature Park were acquired with
18 funds from the Federal Land and Water Conservation Fund ("LWCF") and Washington State
19 bond funds administered by the Recreation and Conservation Funding Board ("RCO"). The
20 Project purposes the conversion of two areas totaling 700 lineal feet funded by the RCO
21 from Nature Park to light rail: one adjacent to Bellevue Way SE and one adjacent to the
22 Periphery Trail sidewalk. The proposed conversion, in turn, resulted in the cancelation prior
23 to construction of a planned extension of a trail along 112th Avenue which would have
24 completed the Mercer Slough trail system.

25 ⁶⁶ FEIS, p. D-14

26 ⁶⁷ FEIS, pp. D-16, 18, 46.

⁶⁸ FEIS, p. D-15.

1 In contrast, B-7/B-7R are the only B Segment alternatives that would not require
2 conversion of RCO-funded property in the Nature Park.⁶⁹ Alternative B-7 would create 0.9
3 acre of permanent impact and 1.7 acres of construction impact.⁷⁰ B-7R offers the unique
4 opportunity to increase the Nature Park by more than 11 acres by removing the extensive fill
5 associated with the existing Park-and-Ride. But Sound Transit nowhere acknowledges this
6 opportunity.

7 As is true throughout the FEIS, the discussion of impacts on the Nature Park are
8 skewed. For example, it concludes that impacts caused by all alternatives other than those
9 which include B-7 would be mitigated by acquiring replacement lands “with a natural
10 wetland character” and that those lands “would support core park functions better than the
11 existing active areas along the park’s western edge.”⁷¹ The replacement areas are not
12 identified, so it is impossible to verify this assertion. Yet, the impacts from alternatives
13 including B-7 would be “replaced with similar areas as the impacted land for no net change
14 in type of use.”⁷² Again, the replacement lands are not identified. Table D-8 compares the
15 permanent impacts of the B-2M alternatives with all other Segment B alternatives. For the
16 former it proposes to mitigate the impact with “replacement land pursuant to Washington
17 State RCO and Section 6(f) requirements that would be consistent with the natural character
18 of the park.” For the latter it simply proposes “replacement land pursuant to Washington
19 State RCO and Section 6(f) requirements or provide financial compensation as agreed with
20 the City.”⁷³ One is left to conclude that inferior lands would be acquired intentionally for the
21 B-7 alternatives so that they compare unfavorably. The FEIS then concludes that all
22 alternatives other than B-7 alternatives would produce a net benefit for the Nature Park.⁷⁴

24 ⁶⁹ FEIS, p. D-79

25 ⁷⁰ FEIS, p. D-15.

26 ⁷¹ FEIS, p. D-46.

⁷² *Id.*

⁷³ FEIS, p. D-46.

⁷⁴ FEIS, pp. D-51-52.

1 H. Alternative B-7R or a tunnel are reasonable and feasible alternatives with
2 lesser environmental impacts than the chosen alternative B-2M.

3 Sound Transit had avoided or misrepresented the analysis of alternatives with lesser
4 environmental impacts.

5 1. The B-7R alternative.

6 The FEIS includes a comparative analysis of several alternatives for the B Segment,
7 including the B-7 alternative. The B-7 alternative would cross Mercer Slough Nature Park,
8 then travel north in the BNSF right-of-way adjacent to I-405. Under this alternative, the
9 South Bellevue Park-and-Ride would remain open and there would be a new transit station at
10 118th Street SE near the Mercer Slough.

11 The City asked Sound Transit to include in the FEIS a revised B-7 alternative known
12 as B-7R. The B-7R alternative follows the same route as B-7, but removes the South
13 Bellevue Park-and-Ride, includes a transit station and park-and-ride near I-90, and eliminates
14 the 118th Street station.

15 Sound Transit chose to review the City's preferred alternative B-7R only in the
16 Public and Agency Comment Summary of the FEIS. Sound Transit limited its review to a
17 description of information it lacked for a comparative review and a partial comparison of B-
18 7R with B-7. There is no discussion or comparison in the FEIS with Sound Transit's
19 preferred alternative, B-2M. The FEIS does not describe the benefits of B-7R to downtown
20 Bellevue, the Winters House, and the Mercer Slough Nature Park.⁷⁵

21 The Section 6(f) and the Segment B/C Least Harm Analysis included in the FEIS also
22 does not consider in detail either B-7 or B-7R.⁷⁶ This failure is summarized succinctly by
23 Sound Transit's treatment of B-7R:

24 While the City has shown a recent preference for alternatives based upon Alternative
25 B-7R, it is important to observe that the City's preference is based on its own criteria
and not based upon an assessment of impacts weighted toward resources protected

26 ⁷⁵ FEIS, Public and Agency Comments Summary, pp. 7-40 through 7-45.

⁷⁶ FEIS, Appendix D

1 under Section 4(f).⁷⁷

2 This statement is difficult to reconcile with reality. Two resources protected under
3 Section 4(f), the Winters House and Mercer Slough Nature Park, suffer vastly lesser harm
4 under B-7R than the impacts imposed by Sound Transit's selected alternative, B-2M.
5 Further, traffic impacts, impacts to neighborhoods, and impacts to downtown are far less
6 under B-7R than under B-2M.

7 2. Tunnel alternative.

8 Late in the Sound Transit design process, during the spring of 2012, Petitioner Build
9 a Better Bellevue presented another alternative for the B Segment – a deep bore tunnel
10 running from the South Bellevue Station into downtown Bellevue. This proposal included
11 feasibility and cost analyses. Neither the City nor the Sound Transit Board considered this
12 option. BBB's analysis showed the tunnel to be less expensive to construct than B-2M, and
13 to have fewer adverse environmental impacts.

14 I. Impacts to downtown Bellevue have not been addressed adequately in the
15 FEIS.

16 The Transportation Environment and Consequences section of the FEIS states that
17 the transportation impacts of the Project were analyzed from three perspectives: regional;
18 corridor; and operations.⁷⁸ The FEIS acknowledges that South Bellevue arterials are over
19 capacity and would remain over capacity with East Link. Sound Transit characterizes this
20 conclusion as from a regional perspective.⁷⁹

21 Sound Transit estimates that by 2020 the B-2M light rail ridership attributable to the
22 B Segment would range between 4,000 and 4,500 riders per day. This figure contrasts with
23 the 35,000 vehicle trips per day on Bellevue Way SE.⁸⁰

24 The FEIS acknowledges that the South Bellevue Park-and-Ride lot would be closed

25 ⁷⁷ *Id.*, p. D-57.

26 ⁷⁸ FEIS, p. 3-6.

⁷⁹ FEIS, p. 3-11.

⁸⁰ FEIS, Technical Appendix, p. 6-8.

1 for the 6-year construction time period and that one lane of Bellevue Way would likely be
2 closed during construction.⁸¹ The FEIS explains that Bellevue Way SE will also need to be
3 closed completely for short periods of time. The FEIS also notes that, during construction,
4 Bellevue Way SE will experience increased congestion and more intersections would operate
5 at LOS F.⁸²

6 The FEIS describes no mitigation for the impacts to Bellevue Way SE and no
7 mitigation is discussed for the closure of the South Bellevue Way Park-and-Ride. There is
8 also no discussion regarding impacts to downtown Bellevue that will occur due to the
9 restricted traffic capacity of Bellevue Way SE and its closures. There is no mitigation
10 offered for closures and lane restrictions that affect freight movement. There is no mitigation
11 offered for closures and lane restrictions that affect pedestrians and bicyclists other than a
12 protected walkway adjacent to the construction area.⁸³

13 The FEIS states that most businesses in South Bellevue are professional offices that
14 do not rely on trucks.⁸⁴ Again, no mention is made of the impacts to downtown businesses.

15 **IX. RELIEF REQUESTED**

16 The Petitioners ask that the Shorelines Hearings Board vacate the Decision, SDP, and
17 Variance, and remand to the City of Bellevue with direction to:

- 18 • Evaluate the impacts of the entire Project on the shoreline.
- 19 • Disclose fully the environmental impacts of the construction and operation of the
20 B-2M alternative.
- 21 • Determine whether the B-7R alternative is a reasonable and feasible alternative to
22 B-2M that will result in lesser environmental impacts to Bellevue Way, Bellevue
23 neighborhoods, the Mercer Slough Nature Park, the Winters House, and
24 Downtown Bellevue businesses.

25 ⁸¹ FEIS, p. 3-32.

⁸² FEIS, p. 3-91.

⁸³ FEIS, p. 3-118.

26 ⁸⁴ FEIS, p. 3-123.

- If the City elects to consider permits for the B-2M alternative, obtain clear direction from the City Council on whether the final proposed alignment and profile for the B-2M alignment, including sound walls and vegetation removal on the western edge of the Mercer Slough Nature Park:
 - is a reasonable, permitted use.
 - promotes and enhances the public interest.
- Include with any issued shoreline permits a comprehensive mitigation plan that addresses both construction and operational impacts of the B Segment alternative ultimately permitted by the City.

Dated this 29nd day of December, 2014.

SCHWABE, WILLIAMSON & WYATT, P.C.

By:



Keith W. Dearborn, WSBA #8882
Alison Moss, WSBA #12767
Troy Greenfield, WSBA #21578
Attorneys for Petitioners

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VERIFICATION

Keith W. Dearborn declares as follows:

I am one of the attorneys for the Petitioners. I have read the Petition for Review and attest that the contents of the petition are correct.

Sworn to under penalty of perjury of the laws of the state of Washington at Seattle, King County, Washington, December 29, 2014.



Keith W. Dearborn

1 **CERTIFICATE OF SERVICE**

2 The undersigned declares under penalty of perjury, under the laws of the State of
3 Washington, that the following is true and correct:

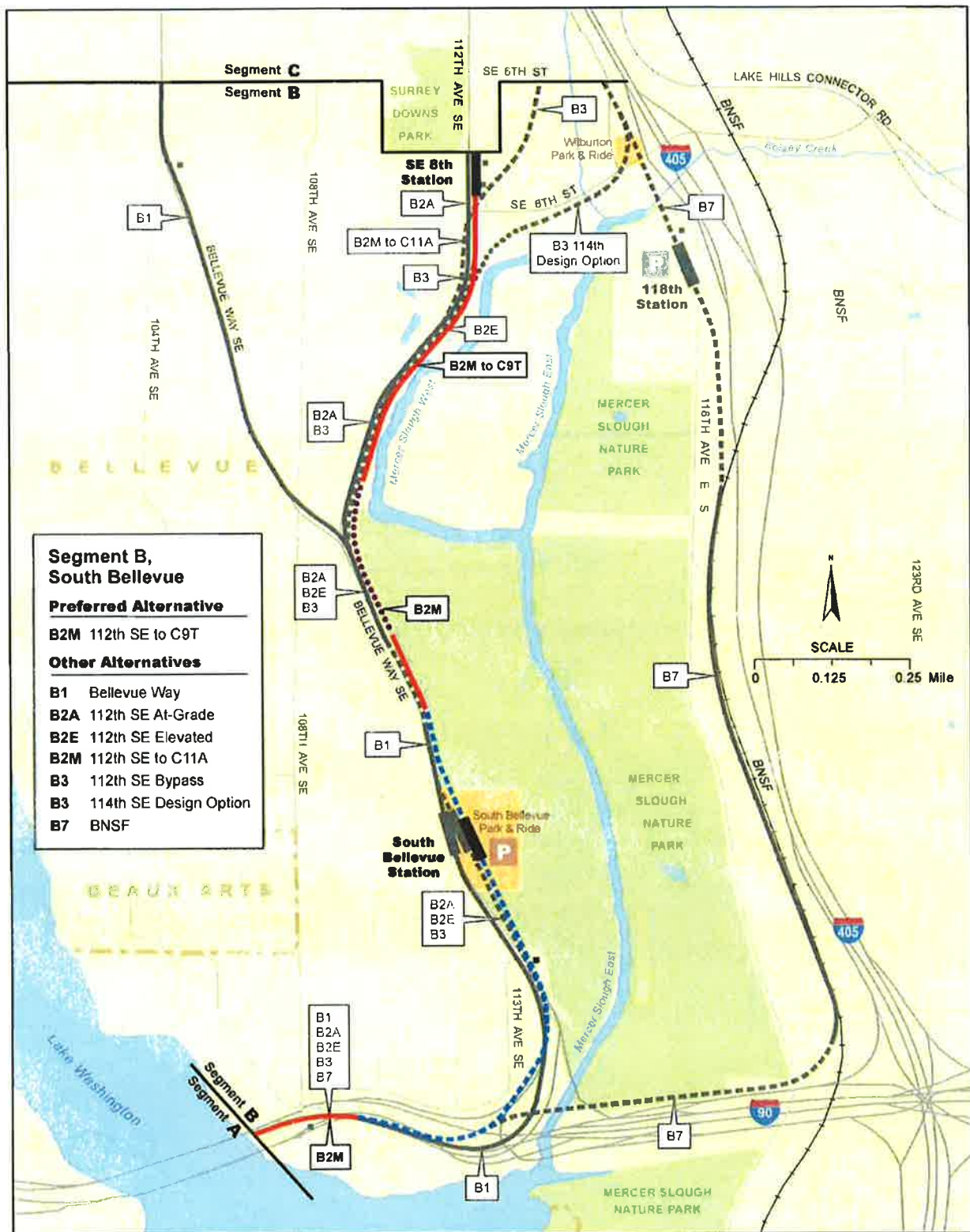
4 That on the 29th day of December, 2014, I arranged for service of the foregoing
5 PETITION FOR REVIEW to the parties to this action as follows:

6 **Original and one copy via Seattle Legal Messenger:**

7 Shorelines Hearings Board
8 1111 Israel Rd. SW, Ste 301
9 Tumwater, WA 98501 (for delivery not mailing)

10
11 
12 Jennifer Hicok

EXHIBIT A



Preferred Alternatives

- At-Grade Route
- - - Elevated Route
- Retained-Cut Route
- Retained-Fill Route

Other Alternatives

- At-Grade Route
- - - Elevated Route
- Retained-Cut Route
- Retained-Fill Route

■ Traction Power Substation
 ■ Station
 P New and/or Expanded Park-and-Ride Lot
 A | B Segment Limit

Source: City of Bellevue (2005) and King County (2006)

Exhibit B-2
Segment B, South Bellevue
 East Link Project

B7-Revised/C9T to NE 2nd Portal

Nov 2, 2010



EXHIBIT B



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Ave SE • Bellevue, WA 98008-5452 • 425-649-7000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

December 9, 2014

Sound Transit
Attn: Ellie Ziegler
401 South Jackson Street
Seattle, WA 98104

Re: City of Bellevue Local Permits: 13-135764-WG (VAR) and 13-135765-LS (SDP)
SIMULTANEOUS FILING OF: The City of Bellevue's locally approved Substantial
Development Permit (SDP) and Approved Shoreline Variance (VAR) Permit #2014-NW-2576

Dear Mrs. Ziegler:

On November 6, 2014, the Department of Ecology (Ecology) received the City of Bellevue (City) decisions on your Shoreline Substantial Development Permit and Variance authorizing development of a new regional light rail transit facility with the City's Shoreline Overlay District. A complete project description is provided within the City's November 6, 2014 decision.

The shoreline variance authorizes construction of the Regional Light Rail Transit Facility 10-feet higher than the 35-foot shoreline height limit within the segment of the project alignment north of the South Bellevue Park & Ride and south of the Winters House.

Your approved SDP has been filed with Ecology.

By law, Ecology must review Variance for compliance with:

- The Shoreline Management Act (Chapter 90.58 RCW)
- Ecology's Variance Permit approval criteria (Chapter 173-27 WAC)
- The City of Bellevue Local Shoreline Master Program

After reviewing a local Variance approval for compliance, Ecology must decide whether to approve, approve with conditions, or disapprove the proposal.

Our Decision on your Shoreline Variance:

Ecology approves your Variance Permit provided your project complies with the conditions required by the City of Bellevue's decision dated November 6, 2014.



Sound Transit East Link
December 9, 2014
Page 2

Please note, however, that other federal, state, and local permits may be required in addition to these shoreline permits.

What Happens Next?

Before you begin activities authorized by these permits, the law requires you to wait at least 21 days from December 9, 2014, the "date of filing." This waiting period allows anyone (including you) who disagrees with any aspect of this permit, to appeal the decision to the state Shorelines Hearings Board.

You must wait for the conclusion of an appeal before you can begin the activities authorized by this permit.

The Shorelines Hearings Board will notify you by letter if they receive an appeal. We recommend you contact the Shorelines Hearings Board before you begin permit activities to ensure no appeal has been received. They can be reached at (360) 664-9160 or <http://www.eho.wa.gov>.

If **you** want to appeal this decision, you can find appeal instructions (Chapter 461-08 WAC) at the Shorelines Hearings Board website above. They are also posted on the website of the Washington State Legislature at <http://apps.leg.wa.gov/wac/default.aspx?cite=461-08>.

If you have any questions, please contact Joe Burcar at Joe.Burcar@ecy.wa.gov or (425) 649-7145.

Sincerely,



Erik Stockdale, Section Manager
Shorelands and Environmental Assistance Program

Enclosure

cc: David Pyle, City of Bellevue

City of Bellevue



DATE: 11/03/2014
TO: Joe Burcar
FROM: David Pyle
SUBJECT: East Link Shoreline Substantial Development Permit and Variance from the Shoreline Master Program

Joe,

Attached is the City of Bellevue East Link SSDP and Variance approval for Ecology review, the decision will be published on November 6, 2014. I have included a paper copy of the City's findings and an electronic copy of the City's findings and associated attachments.

Please send verification of receipt.

Thank you,

David Pyle
Senior Land Use Planner
City of Bellevue
dpyle@bellevuewa.gov
(425)452-2973 (Office)
(425)452-5225 (Fax)
www.bellevuewa.gov

**City of Bellevue
Development Services Department
Land Use Division Staff Report**



Proposal Name: Sound Transit East Link Shoreline Substantial Development Permit and Variance from the Shoreline Master Program

Proposal Location: I-90 to SE 8th Street (See project map)

Proposal Description: Approval of Shoreline Substantial Development Permit and Variance from the City of Bellevue Shoreline Master Program to construct a new regional light rail transit facility within the City of Bellevue Shoreline Overlay District.


File Numbers: 13-135764-WG and 13-135765-LS

Applicant: Ellie Ziegler, Sound Transit

Decisions Included: Shoreline Substantial Development Permit (Process II)
Variance from the Shoreline Master Program (Process II)

Planner: David Pyle, Senior Land Use/Environmental Planner

**State Environmental Policy Act
Threshold Determination:** Final Environmental Impact Statement (FEIS) was issued for the East Link RLRT project on July 15, 2011

**Director's Recommendation/
Decision:** **Approval of Shoreline Substantial Development Permit
Approval of Variance from the Shoreline Master Program**

Carol V. Helland, Land Use Director

Date of Application:	December 19, 2013
Initial Notice of Application:	January 30, 2014
Revised Notice of Application:	February 13, 2014
Decision Publication Date:	November 6, 2014

Deadline for Appeal of Shoreline Substantial Development Permit or Variance from the Shoreline Master Program

The City will transmit its decision on the shoreline substantial development permit and shoreline variance to the Department of Ecology, which will make the final decision on the shoreline variance. Any appeal of either permit must be filed with the Shorelines Hearings Board within 21 days of the date that Ecology transmits its decision on the shoreline variance to the City. See RCW 90.58.140(6) and 90.58.180.

For information on how to appeal a project proposal, visit the Permit Center at City Hall or call 425-452-6800. Appeal of the Shoreline Substantial Development Permit or Variance from the Shoreline Master Program must be made to the Washington State Shoreline Hearings Board (contact the project planner for more information on how to file an appeal with the Shoreline Hearings Board)



City of Bellevue
Development Services Department
P.O. Box 90012, Bellevue, WA 98009-9012
(425) 452-6800 Fax (425) 452-5225

**Shoreline Management Act of 1971
Permit for Shoreline Management Substantial
Development
Conditional Use and/or Variance**

Application No. 13-135764-WG

Date Received 12/19/13

☒ Approved / Date 11/06/14
☐ Denied / Date _____

Type of Action:

- ☒ Substantial Development Permit
☐ Conditional Use Permit
☒ Variance Permit

Pursuant to Chapter 90.58 RCW, a permit is hereby granted to: **Ellie Ziegler, Sound Transit**

To undertake the following development: **Construct a new regional light rail transit facility within the City of Bellevue Shoreline Overlay District. See attached staff report for complete project description.**

Upon the following property: **I-90 to SE 8th Street (See project map)**

adjacent to Mercer Slough
and/or its associated wetlands. The project will be located adjacent to Shorelines of Statewide
Significance (RCW 90.58.030). The project will be located within a Shoreline Overlay District
designation. The following master program provisions are applicable to this development:

- Land Use Code(LUC) Section 20.25E.040 Substantial Development Permit Required
- Land Use Code(LUC) Section 20.25E.080(B)General Regulations Applicable to all Land Use Districts & Activities
- Land Use Code (LUC) Part 20.30R Shoreline Substantial Development Permit
- Land Use Code (LUC) Part 20.30H Variance to the Shoreline Master Program
- City of Bellevue Comprehensive Plan Shoreline Policies

The applicant shall comply with all applicable Bellevue City Codes and Ordinances including but not limited to:

Applicable Codes	Contact Person
Land Use Code- BCC Title 20	David Pyle, 425-452-2973
Noise Control- BCC 9.18	David Pyle, 425-452-2973
Environmental Procedures Code – BCC 22.02	David Pyle, 425-452-2973
City of Bellevue Comprehensive Plan	David Pyle, 425-452-2973

The following conditions are imposed on all work within the City of Bellevue Shoreline Overlay District under the Bellevue City Code or SEPA authority referenced:

After conducting the various administrative reviews associated with this proposal, including applicable Land Use consistency, SEPA (review of the EIS prepared by Sound Transit), and City Code and Standard compliance reviews, the Development Services Department Director does hereby **APPROVE with CONDITIONS** the application for Shoreline Substantial Development Permit.

The following conditions are imposed under authority referenced:

A. COMPLIANCE WITH BELLEVUE CITY CODES AND ORDINANCES

The applicant shall comply with all applicable Bellevue City Codes, Standards, and Ordinances (whether or not discussed in this report) including but not limited to:

Applicable Codes, Standards and Ordinances	Contact Person
Clearing & Grading Code – BCC 23.76	Tom McFarlane, 425-452-5207

Construction Codes – BCC Title 23	Building Review Desk, 425-452-4121
Fire Code – BCC 23.11	Fire Review Desk, 425-452-6800
Land Use Code – BCC Title 20	David Pyle, 425-452-2973
Noise Control Code – BCC 9.18	
Sign Code – BCC Title 22	
Transportation Code – BCC 14.60	Abdy Farid, 425-452-7915
Right of Way Use Code – BCC 14.30	ROW Review Desk, 425-452-6800
Utility Code – BCC Title 24	Art Chi, 425-452-4119

B. GENERAL CONDITIONS

1. UTILITY CODE REQUIREMENTS

The Utilities Department has reviewed the conceptual design only. The applicant must apply for and obtain all required construction permits. Compliance with applicable sections of the City's Utilities Codes (BCC 24) must be met prior to construction permit issuance.

AUTHORITY: BCC 24

REVIEWER: Art Chi

2. CLEARING AND GRADING CODE REQUIREMENTS

The Clearing and Grading Division has approved this proposal with the condition that the applicant apply for and obtain a Clearing and Grading Permit and that all applicable sections of the Clearing and Grading Code (BCC 23.76) be met prior to permit issuance. The applicant shall develop and submit complete clearing and grading plans and prepare a TESC plan for the Clearing and Grading reviewer that includes BMPs designed to limit the potential for surface water discharge into Mercer Slough.

AUTHORITY: LUC 20.30R, 20.25E, 20.25H, BCC 23.76

REVIEWER: Tom McFarlane

3. DESIGN AND MITIGATION PERMIT REQUIRED

Prior to issuance of RLRT project construction permits for work in the City of Bellevue Shoreline Overlay District, Sound Transit must first obtain the required Design and Mitigation Permit(s) as stipulated in LUC 20.25M and LUC 20.30F. Compliance with Design and Mitigation Permit, Shoreline Substantial Development Permit, and Variance approval conditions must be demonstrated through construction permit application(s).

AUTHORITY: LUC 20.25M, LUC 20.30F

REVIEWER: David Pyle

4. NOISE REQUIREMENTS

To mitigate noise impact to adjacent residents and the natural environment, hours of construction are limited to 7:00 a.m. to 6:00 p.m. on weekdays, and 9:00 a.m. to 6:00 p.m. on Saturdays which are not legal holidays. Requests for construction noise exemptions are addressed under BCC 9.18.020.C.

AUTHORITY: BCC 9.18

REVIEWER: David Pyle

5. CONSTRUCTION STAGING REQUIREMENTS

Construction activity within the Shoreline Overlay District shall be limited to the minimum necessary to undertake the development and to minimize the impact of construction activity on sensitive features in the district. The applicant shall prepare a construction staging plan to be submitted and approved as part of the projects right-of-way and construction permits and should coordinate site access with different phases of construction to maximize use of staging space and minimize expanded temporary impact and unnecessary tree removal.

AUTHORITY: LUC 20.30R

REVIEWER: David Pyle

6. STRUCTURE HEIGHT

All structures located within the Shoreline Overlay District shall be limited to 35 feet in height measured from average existing grade except as allowed through the associated shoreline variance approval and as defined in Attachment 4, Variance from the Shoreline Master Program Narrative.

AUTHORITY: LUC 20.30H

REVIEWER: David Pyle

7. SEASONAL CLEARING AND GRADING RESTRICTIONS

The project is located adjacent to Mercer Slough where the potential for surface water discharge into the slough's wetland system is high. The project will be subject to work restrictions during the rainy season. The clearing & grading code defined rainy season will be applied through construction permit review. The Development Services Department Director must grant approval to initiate or continue clearing or grading activity

during the rainy season. Any approval will be based on site and project conditions, extent and quality of the erosion and sedimentation control, and the project's track record at controlling erosion and sedimentation.

AUTHORITY: BCC 23.76

REVIEWER: Tom McFarlane

8. PUBLIC ACCESS IMPROVEMENTS

The public access improvements to Mercer Slough shall be implemented with construction permits and must be complete prior to system operation.

AUTHORITY: LUC 20.30R

REVIEWER: David Pyle

9. TREE REMOVAL

Tree removal within the shoreline overlay district shall be limited as follows:

- a) All trees within the 34 foot TCZ may be removed.
- b) Trees within the 30 foot TCZ buffer may be removed on an as needed basis when removal is required for construction and safe operation of the RLRT facility.
- c) Trees located outside the TCZ and the TCZ buffer shall be retained unless modification or removal is allowed under the standard tree preservation requirements of LUC 20.20, 20.25E, or 20.25H. Any hazard tree removal outside of the TCZ or TCZ buffer shall be supported by required hazard tree certification.

AUTHORITY: LUC 20.20, 20.25E, 20.25H, 20.25M

REVIEWER: David Pyle

C. PRIOR TO ISSUANCE OF ANY CONSTRUCTION PERMIT

1. DESIGN AND MITIGATION PERMIT REQUIRED

Prior to issuance of RLRT project construction permits, Sound Transit must first obtain the required Design and Mitigation Permit(s) as stipulated in LUC 20.25M and LUC 20.30F. Compliance with Design and Mitigation Permit, Shoreline Substantial Development Permit, and Variance approval conditions must be demonstrated through construction permit application(s).

AUTHORITY: LUC 20.25M, LUC 20.30F

REVIEWER: David Pyle

2. RIGHT-OF-WAY USE PERMIT

Prior to issuance of any construction or clearing and grading permit, the applicant shall secure applicable right-of-way use permits from the City's Transportation Department, which may include:

- a) Designated truck hauling routes.
- b) Truck loading/unloading activities.
- c) Location of construction fences.
- d) Hours of construction and hauling.
- e) Requirements for leasing of right of way or pedestrian easements.
- f) Provisions for street sweeping, excavation and construction.
- g) Location of construction signing and pedestrian detour routes.
- h) All other construction activities as they affect the public street system.

In addition, the applicant shall submit for review and approval a plan to maintain pedestrian access during construction of this project. Access shall be provided at all times during the construction process, except when specific construction activities such as shoring, foundation work, and construction of frontage improvements prevent access. General materials storage and contractor convenience are not reasons for preventing access.

The applicant shall secure sufficient off-street parking for construction workers before the issuance of a clearing and grading, building, a foundation or demolition permit.

AUTHORITY: BCC 11.70, 14.30

REVIEWER: ROW Review Desk

3. SUBMITTAL OF FINAL MITIGATION PLAN

Prior to the issuance of any construction permits, the applicant shall prepare and submit a final mitigation plan to the City and consistent with this staff report. Final approval of the mitigation plan shall be made by the project planner consistent with the findings of this staff report and the land use code.

AUTHORITY: LUC 20.30R, 20.25E, BCC 23.76

REVIEWER: David Pyle

4. DESIGN CHANGES

Any changes to the development plans requested by the Development Services Department or the applicant prior to the issuance of a construction permit must be undertaken in a manner that ensures compliance with design review objectives. Final approval shall be made by the project planner consistent with the findings of this staff report and consistent with professional judgment.

AUTHORITY: LUC 20.30F, 20.30H, 20.30R

REVIEWER: David Pyle

D. PRIOR TO ISSUANCE OF CERTIFICATE OF OCCUPANCY/FINAL INSPECTION

1. INSTALLATION OF REQUIRED MITIGATION

Installation of compensatory mitigation for wetland impacts, in accordance with the approved mitigation and monitoring plan, must be completed and approved prior to the issuance of a temporary certificate of occupancy or final inspection. Mitigation must be consistent with the project design and mitigation permit. Final mitigation installation approval/inspection shall be made by the project planner and an as-built plan of the installed mitigation shall be prepared by the applicant and submitted to the project clearing and grading permit as a post issuance revision. Monitoring reports demonstrating success in landscape establishment shall be submitted annually at the end of the growing season by December 31 for a period of ten years following installation.

Annual mitigation monitoring reports shall be submitted to:

David Pyle or Environmental Planning Manager
Land Use Division
Development Services Department
PO BOX 90012
Bellevue, WA 98009-9012

AUTHORITY: LUC 20.30R, 20.25E, 20.25H

REVIEWER: David Pyle

This permit is granted pursuant to the Shoreline Management Act of 1971 and nothing in this permit shall excuse the applicant from compliance with any other federal, state or local statutes, ordinances or regulations applicable to this project, but not inconsistent with the Shoreline Management Act (Chapter 90.58 RCW).

This permit may be rescinded pursuant to RCW 90.58.140(8) in the event the permittee fails to comply with the terms and conditions hereof.

Activity pursuant to this permit, or substantial progress toward activity, must be undertaken within two years of the date of final approval. This permit shall expire five years from the date of local approval.

Activity pursuant to this permit will not begin or is not authorized until twenty-one (21) days from the date of filing, as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one (21) days from the date of such filing have terminated; except as provided in RCW 90.58.140(5) (A) (B) (C).

November 6, 2014

Date

David Pyle

City of Bellevue, Land Use Division

CC: Attorney General, Department of Ecology, Northwest Region
Dept. of Fish and Wildlife, Attn: Stewart Reinbold & Christa Heller, 3190 160th Avenue SE, Bellevue, WA 98008-5452
Dept. of Ecology, Attn: Joe Burcar, 3190 160th Avenue SE, Bellevue, WA 98008-5452

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LIST OF ATTACHMENTS

- 1. Shoreline Substantial Development Permit Project Narrative**
- 2. Project Map**
- 3. Critical Areas Report**
- 4. Variance from the Shoreline Master Program Project Narrative**
- 5. Wetland and Stream Delineation Report**
- 6. Project Public Inquiries**

I. REQUEST AND REVIEW PROCESS

A. Background

The Central Puget Sound Regional Transit Authority ("Sound Transit" or the "Applicant") is proposing to construct the first phase of Sound Transit 2, a new Regional Light Rail Transit Facility (RLRT) between Seattle and the east side of Lake Washington, known as the East Link Project (East Link). The East Link project was approved by voters under the Sound Transit 2 plan in 2008. Since initial approval in 2008, Sound Transit has worked closely with the City of Bellevue (City) to design a RLRT facility that meets regional and City needs while following the voter-approved alignment. A complete project history, including description of City engagement benchmarks, can be found in Section 1.1 of the project narrative (the "Narrative") included as **Attachment 1**.

Allowed Use:

The proposed East Link RLRT facility is considered a permitted use under LUC 20.10.440 when the City Council has approved the facility system by resolution, ordinance, or development agreement (see LUC 20.10.440 "Transportation and Utilities" Footnote 25). The Bellevue City Council has approved the East Link RLRT facility as proposed in this application. The alignment proposed by Sound Transit with this application is allowed. The use is also allowed, as established under LUC 20.10.440, in the Shoreline Overlay District and the Critical Areas Overlay District under LUC 20.25E.060 and LUC 20.25H.050.A.

B. Project Description

General Bellevue RLRT Alignment:

The East Link Project includes approximately 14 miles of light rail track/guide way and 10 stations serving Seattle, Mercer Island, South Bellevue, downtown Bellevue, Bel-Red (Bellevue), and Overlake areas in Redmond. An image depicting the East Link RLRT facility alignment is included as Figure 1 below. Elements of the East Link project located within City boundaries include approximately 6 miles of new light rail track (at grade, below grade, and elevated) from I-90 to SR 520, 6 stations (at grade and elevated), 2 parking (park and ride) facilities, and other structures, facilities, and development associated with the RLRT. RLRT alignment within the City is illustrated in Figure 2 below.

Figure 1 – East Link RLRT Alignment

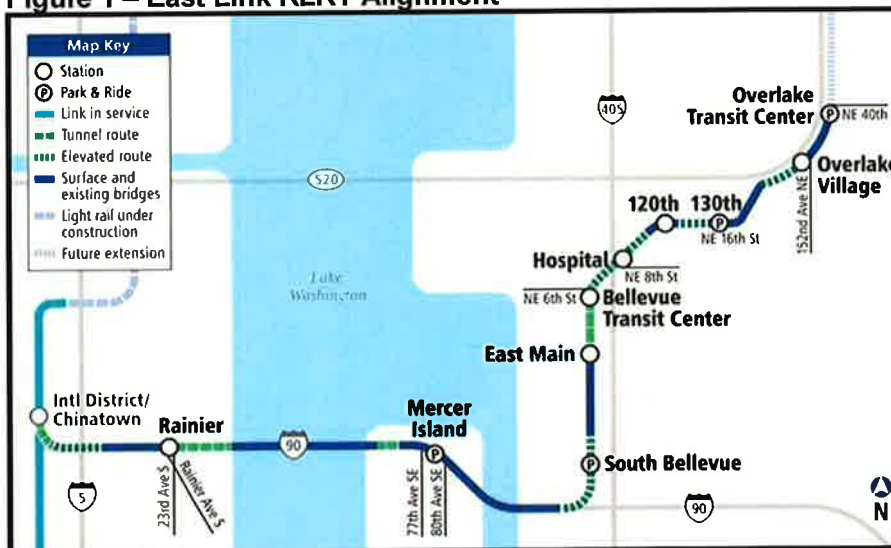
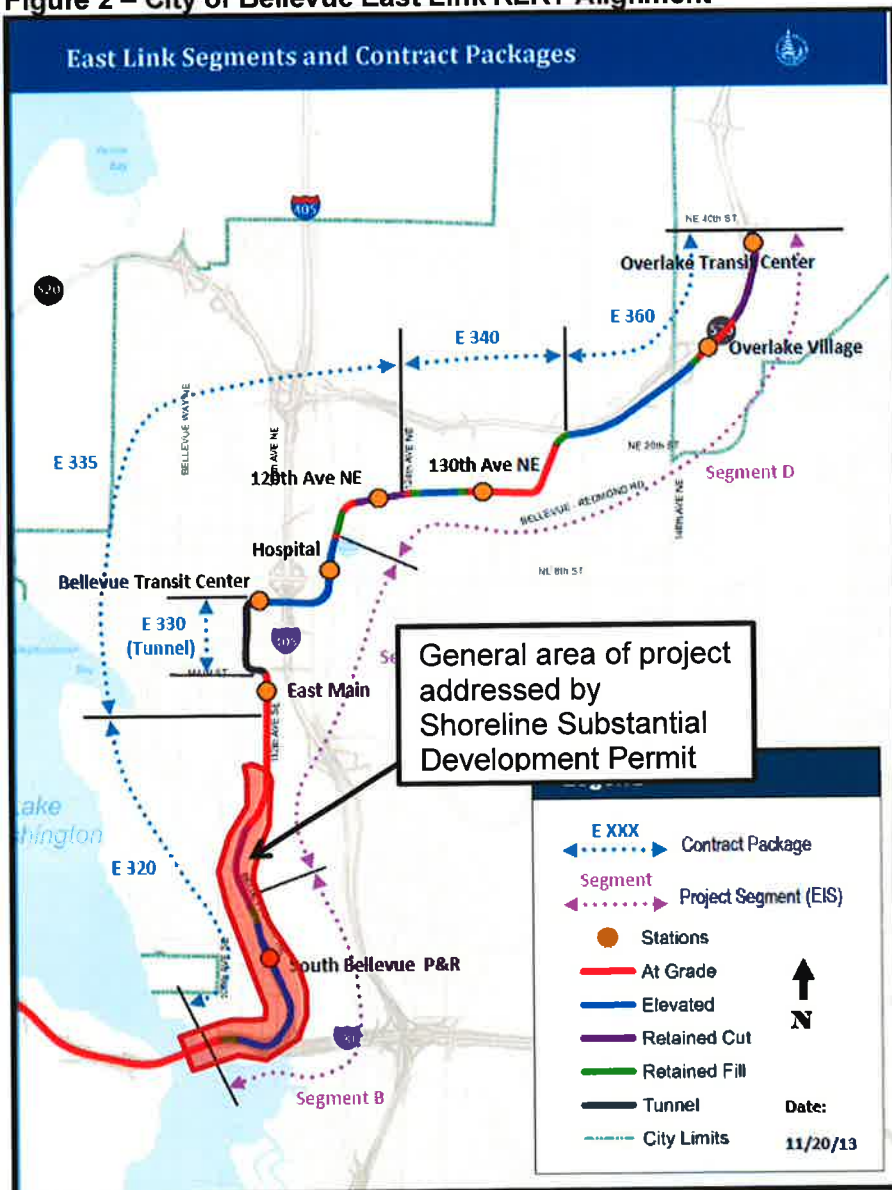


Figure 2 – City of Bellevue East Link RLRT Alignment



Shoreline Overlay District:

Segments of the East Link RLRT project cross through areas adjacent and connected to Lake Washington and Mercer Slough, which are both Shorelines of the State governed under the Washington State Shoreline Management Act (SMA) and the City Shoreline Master Program (SMP). Generally, the Shoreline Overlay District includes lands 200 from water bodies over 20 acres in size, streams that flow at a rate of more than 20 cubic feet per second, and wetlands and floodplains associated with these features (LUC 20.25E.010 and RCW 90.58.030).

Limitation on Permit Scope:

For the purpose of this permit application, the term "Project" includes only those elements of the East Link RLRT located within the City Shoreline Overlay District that are described in greater detail below. By definition, this application for shoreline substantial development permit includes

all impacts to critical areas, wetlands and buffers contained within the 200 foot jurisdictional area plus associated wetlands. Elements of the East Link RLRT project not located within the Shoreline Overlay District are subject to permit review and approval under City Light Rail Overlay District requirements (LUC 20.25M). A complete Project description is included in Section 2.0 and mapped in Appendix A of the Project Narrative included as **Attachment 1**. A map of the Project alignment and the boundary of the City's Shoreline Overlay District is included as **Attachment 2**. The East Link RLRT project was designed to minimize construction in sensitive areas, including the City's Shoreline Overlay District. Only a limited portion of the RLRT guideway is located within the shoreline overlay district. Work within the shoreline proposed under this permit includes RLRT guideway construction, and also includes peripheral facility components required under the City's development codes, such as stormwater outfalls, retaining walls, access driveways, and utility connections. Development activity authorized under this permit includes (see Section 2.0 and Appendix A of **Attachment 1** for a complete list):

- RLRT facility (guideway) and associated infrastructure
- Seismic retrofit of I-90 East Channel Bridge columns including column jackets for piers and crossbeams for strengthening
- Installation of Overhead Catenary System (OCS) Poles
- Temporary Erosion and Sedimentation Control (TESC) Best Management Practices (BMPs)
- Guardrail revisions as needed
- Winters House parking lot reconfiguration and new access road for existing blueberry farm
- Mercer Slough Wetland pedestrian boardwalk(s) (to be designed and constructed by City)
- Utility relocations
- Drainage infrastructure/features including stormwater discharge facilities within Mercer Slough
- Clearing and grading activities
- Tree Removal
- Retaining wall demolition and construction
- Wetland, stream, and buffer mitigation and site restoration
- Temporary access routes and staging areas
- Illumination infrastructure
- 112th Ave SE improvements and RLRT undercrossing at SE 15th
- Sidewalk and trail improvements
- Relocated SE 15th Street alignment
- Small span bridges over existing streams
- Landscape installation and maintenance

The 112th Ave SE road-over-rail improvements and other modifications necessary to reconfigure the Winters House and Blueberry Farm parks properties impacted by the RLRT facility are described in greater detail below. Other work within the Shoreline Overlay District includes wetland and stream mitigation through rehabilitation and enhancement work. This element of the project is proposed within the Mercer Slough wetland system and associated buffers. The rehabilitation and enhancement work includes ground contouring, soil amendment, invasive plant removal, and planting of native plant material. Refer to section IV below for more information regarding shoreline critical area impacts and associated mitigation. Conceptual critical areas mitigation plans approved with this Shoreline Substantial Development Permit are included in **Attachment 3**, East Link RLRT project Critical Areas Report (CAR).

I-90 East Channel Bridge

On the bridge deck, pavement in the center roadway where the existing HOV lanes are currently located will be removed and plinths (rail foundations) and the rails will be installed. All work associated with the installation of the rail tracks would occur within the center roadway. The columns supporting the East Channel Bridge will be seismically upgraded. To seismically upgrade the bridge, "jackets" will be installed around the bridge pier columns. Barges may be used for this work. Access and staging for the retrofit work will likely occur on existing paved and gravel surfaces under the East Channel Bridge. In addition, the cap beam at the top of each pier column will also be strengthened. Other activities that will be performed are replacement of the existing bridge bearings and some girder strengthening. The seismic upgrades will require in-water work, and potential temporary impacts will be mitigated through construction best management practices to protect water quality.

112th Ave SE Road Improvements:

The 112th Ave SE road is required to be raised so that the RLRT guideway may pass underneath at approximately SE 15th St., allowing the RLRT facility to transition from the east to the west side of the 112th. In support of this reconfiguration, the adjacent sidewalk and associated infrastructure will have to be removed and replaced. Along the east side of 112th, extending north from the wye at Bellevue Way SE, the City has elected to add a multi-use trail adjacent to the sidewalk in support of increased public access to the shoreline areas within the Mercer Slough complex. The RLRT guideway under-crossing of 112th Ave SE cuts off the connection of SE 15th St., which serves the Bellefield Office Park, and requires the roadway to be realigned to maintain access. Retaining walls have been implemented where feasible to reduce impact to the shoreline and its associated wetlands.

Winters House Parks Property and Historic Resources:

The East Link project alignment requires taking some of the existing parking spaces at the Winters House. As mitigation, the project is required to replace those spaces. Replacement of the parking requires reconfiguration of the lot. Due to the location of the Winters House and the fact that it is surrounded by shoreline wetland areas, it is not possible to replace the parking without minor impacts to the shoreline. Impacts have been avoided and minimized to the maximum extent practicable. Avoidance measures include moving structures to avoid impacts, the use of different construction methods to reduce the amount of impact, and use of a retaining wall instead of a structural fill slope to also minimize areas of disturbance. In all areas where impacts occur, existing right of way and parking areas are already present adjacent and within the shoreline district.

Blueberry Farm Parks Property:

The East Link project alignment also requires taking some of the existing parking spaces at the Blueberry Farm. In addition to the parking lot reconfiguration, the RLRT facility will cut off the driveway connection to Bellevue Way SE for the existing Blueberry Farm retail center. The retail center will be relocated to within the Winters House parking lot; however a maintenance road is required for future access to the existing building and will be partially located within the shoreline district. This roadway will be used primarily by City personnel in support of maintenance of the Mercer Slough complex; however it may be used in rare occurrences as access to over-flow parking at the existing Blueberry Farm site. In addition, the roadway may be used as fire access in the event the fire department would need to respond to an emergency at either the Winters House or the Blueberry Farm existing building. The access road is located as close to the light rail alignment as possible in order to minimize impacts to shoreline wetlands. However, some impacts are unavoidable.

C. Request

The applicant is requesting a Shoreline Substantial Development Permit (SSDP) and approval of a Variance to the Shoreline Master Program. In accordance with LUC 20.25M.010.C, a regional transit authority may apply for permits to develop an RLRT facility or any portion of an RLRT system provided that the regional transit authority is the owner of the property, has written consent from the owner of the property, or has Board authorization for acquisition of the property. There are three groups of property ownership affected by the shoreline permit and variance applications; WSDOT owned, City owned, and privately owned. Sound Transit has obtained written consent to apply for the Shoreline Substantial Development Permit from both WSDOT and the City. Sound Transit's Board has authorized the acquisition of the private parcels that are affected by the SSDP application. Sound Transit has included verification of written consent and acquisition authorization with project application materials included in **Attachment 1** to this staff report.

In addition to this request for Shoreline permits, Sound Transit must obtain Design and Mitigation Permit (LUC 20.25M.030.C) for each of the project design contract packages under Bellevue's jurisdiction (E320, E330, E335, and E340 – see Figure 2 above). Due to the narrow scope of work in the shoreline, and the difference in process requirements, Design and Mitigation permits are processed separately from this shoreline permit application.

D. Approvals Required

The applicant has requested that this decision include the following approvals as required by the appropriate Bellevue City Code (BCC) and Land Use Code (LUC) sections:

- Shoreline Substantial Development Permit (File # 13-135764-WG - LUC 20.30R)- Segments of the proposed East Link RLRT project alignment are located within the Shoreline Overlay District requiring a Shoreline Substantial Development Permit (LUC 20.30.H.125). Proposals for development within the Shoreline Overlay District must demonstrate compliance with applicable Land Use Code Performance Standards. Shoreline Substantial Development Permits are a Process II Administrative decision made by the Development Services Department Director (or appointee). The decision is subject to compliance with the Shoreline Substantial Development criteria listed in LUC 20.30R.155. Following City action on the Shoreline Substantial Development Permit, the decision is sent to the Washington State Department of Ecology officially filing the decision in accordance with WAC 173-27-130. Compliance with Shoreline Substantial Development criteria is discussed in greater detail in section VIII below.
- Variance to the Shoreline Master Program (File # 13-135768-LS LUC - 20.30H)- Project objectives, design constraints, and undulating topography has resulted in an exceedance of the 35 foot Shoreline Overlay District height restriction for a limited section of the proposed alignment. To accommodate project needs, a Variance to the Shoreline Master Program is required. Variances from the Shoreline Master Program are Process II administrative decisions made by the Development Services Department Director (or appointee). For variance approval, the applicant must demonstrate compliance with the Variance approval criteria listed in LUC 20.30H.155 and the shoreline performance standards found in LUC 20.25E. Following approval, the Variance is forwarded to the Washington State Department of Ecology for final approval as required by WAC 173-27-200. Compliance with Shoreline Variance criteria is discussed in greater detail in section IX below.

E. Review Process

The Shoreline Substantial Development Permit and Variance from the Shoreline Master Program are supported by a review process that includes public noticing of the application

through a mailing to property owners within 500' of the project boundary, collection of public comment, revision requests, and publishing of a decision by the City. The City's decision is then transmitted to the Washington State Department of Ecology, the agency serving as the final authority on Variances to the Shoreline Master Program as required under the State Shoreline Management Act. Following Department of Ecology approval of the Variance, and with validation of the Shoreline Substantial Development Permit, Design and Mitigation Permit and Construction permits must be issued before commencement of construction. This Variance and Shoreline Substantial Development Permit does not constitute a construction permit.

II. ZONING, COMPREHENSIVE PLAN, AND LAND USE CONTEXT

A. Zoning and Comprehensive Plan

Within the Shoreline Overlay District, the project alignment passes through public and private property with mixed Comprehensive Land Use Designations and Zoning including land dedicated for residential and office uses. The proposed East Link RLRT facility does not include any changes in current or future land uses. Project design review is undertaken through the design and mitigation permit required under LUC 20.25M.030.C. The Shoreline Substantial Development Permit discussed in this report is limited in scope to those portions of the East Link RLRT facility located within the Shoreline Overlay District and does not constitute land use approval or design review approval of any portion of the East Link RLRT facility.

B. Land Use Context

The alignment selected was designed to service multiple communities, starting in Seattle, terminating in Redmond, and passing through downtown Bellevue. One section of the alignment is located along the shoreline edge of Lake Washington and along the edge of Bellevue's Mercer Slough. As the alignment progresses east from its origin in Seattle by way of Mercer Island, the facility crosses the I-90 East Bridge into Bellevue. At this point the guideway is located in the center of the existing I-90 bridge. The I-90 East Bridge crosses through the City's Shoreline Overlay District as it makes landfall on the Bellevue shoreline at Enatai Beach Park. After the alignment turns north from I-90, the alignment passes through a topographically flat section along the eastern edge of Mercer Slough. The project is bordered to the west by the undulating and hilly Enatai and Surrey Downs communities and to the east by the Mercer Slough and the Bellefield Office Park. The alignment enters the South Bellevue Park and Ride on the east side of Bellevue Way SE and remains on the east side of Bellevue Way and 112th Ave SE until it passes SE 15th Street where it is proposed to cross under the 112th Ave SE elevated roadway and pass out of Shoreline Jurisdiction. A detailed map depicting project alignment and the boundary of the Shoreline Overlay District is included in Appendix A of **Attachment 1**.

III. PROPOSED FACILITY DESIGN

The shoreline of Lake Washington, the Mercer Slough, including its associated wetlands have been heavily modified, drained, and/or filled since the late 1800's at first in support of agriculture and later urban development. More recently construction of roads including I-90, Bellevue Way SE and 112th Ave SE, and other utility infrastructure within the slough, have caused significant change to the character of these shoreline areas. As an example, the construction of both the South Bellevue Park and Ride and the Bellefield Office Park required filling more than 130 acres of Mercer Slough. Impacts from the East Link Project will either be located within an existing interstate, adjacent to the existing fill prisms of the South Bellevue park and ride and Bellevue Way, or between the fill for the 112th Ave SE roadway and the Bellefield Office Park. Impacts within all areas have been minimized to the largest extent possible; however, due to the

approved alignment, reconfiguration of existing roadway infrastructure and the Winters House parking area are unavoidable. Conceptual project design details are included in **Attachment 1**.

IV. CONSISTENCY WITH GENERAL LAND USE CODE REQUIREMENTS

A. General Provisions of the Land Use Code

The East Link RLRT alignment crosses through land dedicated for residential and commercial use. The proposed East Link RLRT facility is allowed (see section I above) and the design requirements of LUC 20.25M must be met. Sound Transit must receive Design and Mitigation Permit (LUC 20.25M.030.C) for each of the project design contract packages under Bellevue's jurisdiction (E320, E330, E335, and E340 – see Figure 2 above). Due to the narrow scope of work in the shoreline, and the difference in process requirements, Design and Mitigation permits are processed separately from this shoreline permit application. Consistency with the general requirements of the Land Use Code and with the specific requirements of the Light Rail Overlay District (LUC 20.25M) will be evaluated and addressed in the individual design and mitigation permits.

B. Height Requirement

LUC 20.25E.080.B.5 restricts building height to 35 feet from existing grade for all property that falls within the boundaries of the Shoreline Overlay District. The applicant is proposing an elevated guideway that exceeds the 35-foot height limit in limited areas where the elevated guideway will cross above two small areas of the Mercer Slough wetland just north of the South Bellevue Park & Ride Station. To address the portion of the project that is within the Shoreline Overlay District and that exceeds the 35-foot height limitation, the applicant has requested a Variance from the City's Shoreline Master Program for approximately 90 linear feet of the 6 mile alignment located in Bellevue. These areas could not be avoided and cause the otherwise level alignment to exceed the maximum height limit where the guideway will pass above two small wetland depression areas of the Mercer Slough wetland (see Variance Criteria Narrative - **Attachment 4**).

The existing Park and Ride is immediately south of the two wetland depression areas where the shoreline height variance is required. The footprint of the Park & Ride is constrained by the Mercer Slough on the south, east, and north, and by Bellevue Way SE to the west. The Memorandum of Understanding between the City and Sound Transit, Exhibit C, contemplates that the South Bellevue Station, together with a five-story parking structure for approximately 1500 automobiles, will be constructed within the footprint of the existing Park & Ride thereby avoiding new wetland disturbance. Considerations of safety and the constrained size of the Park & Ride site require that the Station be elevated in order for cars and buses to pass beneath it. Sound Transit's Design Criteria Manual requires that an elevated station be 16.5 feet above grade. After discussions with City staff, Sound Transit agreed to lower the height to 14.5 feet, which is the minimum height that will allow buses to pass under the guideway while entering and leaving the Park & Ride.

At the north edge of the Park & Ride site, the ground drops off sharply adjacent to the Bellevue Way roadbed that was constructed on fill. The sudden change in grade at the edge of the Park & Ride means that the guideway will be approximately 45 feet above grade when it passes above the south edge of the southern wetland for an area of approximately 836 square feet, and will be about 42 feet above grade when it passes above the north edge of the northern wetland for an area of approximately 138 square feet. The alignment of the guideway cannot be moved to the west to avoid these wetland areas without relocating Bellevue Way SE, with consequent adverse impacts on the City's street system and the residences to the west of this street.

C. Tree Removal

Tree removal and ongoing vegetation management within the shoreline district is necessary for construction and safe operation of the RLRT facility. Trees located near the edge of the guide way can pose operational and maintenance safety risks if they fall or drop leaves and branches. To help ensure the safety of all passengers of the RLRT facility, and as required by the Sound Transit Design Criteria Manual, a Tree Clear Zone (TCZ) of 34 feet and a TCZ buffer of 30 feet measured from the center of the RLRT guide way will be established. The Project will remove all trees located within the TCZ and will evaluate each tree located in the TCZ buffer for preservation, pruning, or removal. Any hazard trees determined to pose a risk to the safety of the RLRT facility within the TCZ buffer will be removed. Tree removal, tree pruning, and vegetation management outside of the TCZ and the TCZ buffer areas shall be subject to standard tree protection requirements of LUC 20.20, 20.25E, and 20.25H.

Sound Transit conducted a tree survey in 2013-2014 that includes a health assessment for all significant trees as defined by City code. As stated in the City's Development Services Handout L-27, Tree Preservation, the definition of significant tree is a healthy evergreen or deciduous tree, eight inches in diameter or greater, measured four feet above existing grade. Hazardous trees are defined as posing a threat to public safety, or posing an imminent risk of damage to an existing structure, public or private road or sidewalk, or other permanent improvement not defined in the code.

Tree removal in the shoreline district was limited to the extent possible through design refinements and avoidance and minimization efforts. All tree removal that is required is based on the approved RLRT facility alignment and on-going maintenance needs for RLRT systems. There is no suggested ratio in the City code for tree replacement. The applicant has proposed a tree replacement ratio consistent with aesthetics, survivability, and the area available for planting. The ratios are only relevant for shoreline trees within critical areas. Tree removal outside of shoreline critical areas is being addressed through a Tree Preservation Plan with the Design and Mitigation Permit. Within the Shoreline Overlay District, the applicant is proposing replacement quantities included in Table 7 below, presenting a summary of significant trees removed and proposed mitigation quantities to be planted within the vicinity.

Table 7 – Shoreline District Significant Tree Removal and Proposed Mitigation

Shoreline Area	Coniferous Trees Removed	Coniferous Trees Replaced (Proposed 3:1 ratio)	Non-Coniferous Trees Removed	Non-Coniferous Trees Replaced (Proposed 1:1 ratio)
I-90/ East Channel Bridge	0	0	0	0
Bellevue Way SE	14	42	61	61
112 th Ave SE/Bellefield Office Park	16	48	212	212
Total	30	90	273	273

Due to safety and maintenance considerations for the RLRT facility as required by Sound Transit's Design Criteria Manual, trees cannot be replanted within the TCZ, however they may be planted within the TCZ buffer, or outside of the TCZ and buffer in the project vicinity. Where possible, trees will be replanted where removed. In all other cases, trees will be replanted in the following locations:

- Adjacent to the shoreline district to screen RLRT facilities from adjacent public uses,
- Along Mercer Slough and the Mercer Slough wetlands as part of critical area buffer

- enhancement efforts, or
- At the Sweyolocken mitigation site for the Project.

D. Critical Areas

In addition to the restrictions on development imposed through the Shoreline Overlay District, segments of the project are located within areas regulated as critical areas and subject to the rules of LUC 20.25H. In many instances, there is overlap and portions of the project are regulated under both the rules of the Shoreline Overlay District and the Critical Areas Overlay District. Impacts regulated under Shoreline Overlay District rules are addressed in this staff report. Impacts regulated under Critical Areas Overlay District rules are addressed in the project Design and Mitigation Permit.

Impact	Shoreline Overlay District Addressed in Shoreline Substantial Development Permit	Critical Areas Overlay District* Addressed in Design and Mitigation Permit
Shoreline Wetland Impacts	X	X
Non-Shoreline Wetland Impacts		X
Wetland Buffer Impacts		X
Stream Impacts		X
Stream Buffer Impacts		X
Shoreline Buffer Impacts		X
Shoreline Overlay Impacts	X	
Floodplain Impacts		X
Geologic Hazard Area Impacts		X
Tree Removal Impacts	X	X

*Impacts regulated under the Critical Areas Overlay District are addressed in the project Design and Mitigation Permit as required by LUC 20.25M.

Shoreline Critical Area:

Lake Washington and Mercer Slough are classified as Shoreline Critical Areas (LUC 20.25E.017.D). For that portion of the East Link RLRT alignment in shoreline jurisdiction, the Shoreline Overlay District area is the same as the Shoreline Critical Area. The only area where the Shoreline Overlay District does not overlap the Shoreline Critical Area is in the vicinity of 112th Ave SE due to the measurement of the shoreline critical areas buffer. The Shoreline Overlay District includes the area 200 feet landward of the ordinary high water mark and any associated wetland. The Shoreline Critical Area only includes the waters of Lake Washington, underlying lands, and associated wetlands. In this instance, along 112th Ave SE, the Shoreline Critical Area is equivalent to the area of the Mercer Slough and three small associated wetlands, but the Shoreline Overlay District extends 200 feet landward from the OHWM of the west channel of Mercer Slough. Further south, along the east side of Bellevue Way, the Shoreline Critical Area boundary is the edge of the Mercer Slough wetland system. This wetland edge is also the edge of the "Shoreline Overlay District" since it is an associated wetland of Mercer Slough and therefore does not include a 200 foot offset (which offset is measured from OHWM).

Shoreline Critical Area Buffer:

Per LUC 20.25H.035, the shoreline critical area buffer width for an undeveloped site is 50 feet. The shoreline critical area buffer overlaps with the existing stream and/or wetland critical area buffers; for the most part these buffers extend beyond the shoreline district. Therefore, any impacts to the shoreline critical area buffer are addressed as impacts to wetland and/or stream critical area buffer impacts. These impacts and associated mitigation outside the shoreline district are identified and discussed in the attached Critical Areas Report and Mitigation Plan (**Attachment 2** Appendix C) but are not further discussed in this staff report. Critical Areas permitting is under review with the project Design and Mitigation permits for each of the project Contract segments.

Shoreline Critical Area Impacts and Mitigation:

Sound Transit is committed to achieving no net loss of wetland functions and area on a Project-wide basis, and made this commitment as part of the East Link Light Rail Final Environmental Impact Statement (FEIS) and associated Record of Decision (ROD). The no net loss commitment is also applicable to shoreline critical area impacts. In support of achieving no net loss, the East Link Light Rail Critical Areas Report and Mitigation Plan (CAR – **Attachment 2**) includes details on how permanent and temporary impacts will be mitigated (Appendix C). The information in the CAR provides mitigation design details as well as and monitoring and maintenance measures that will ensure effectiveness of the critical areas mitigation.

This shoreline permit application includes information on existing conditions and potential impacts to wetlands and streams and their buffers within the City shoreline district. Wetlands and streams outside the shoreline district are addressed within the CAR, which captures all the wetlands, stream, and buffer impacts for the full extent of the East Link Light Rail Project outside the shoreline district.

Throughout the planning process and final design, Sound Transit has made significant efforts to avoid and minimize impacts to the critical areas within and adjacent to the Project area. Focused design meetings have been conducted in order to determine how design techniques can be incorporated into the Project so that impacts to critical areas are avoided and/or minimized. Some examples of avoidance and minimization techniques include:

- Realigning the guideway to avoid critical areas.
- Proposing retaining walls instead of fill slopes in areas that are within or adjacent to critical areas. This technique was used in several areas along Bellevue Way and 112th to minimize shoreline/wetland impacts.
- Reducing hardscape elements (sidewalks, driveways, roads, etc.) to avoid impacts except where such avoidance conflicts with city code requirements for expanded sidewalks.
- Bridging over streams and waterbodies.

It is estimated that the avoidance and minimization efforts pursued by the design team resulted in a reduction of greater than 50% of the potential critical area impact within the shoreline district.

Impacts within the City shoreline district from the project will either be located within an existing interstate, adjacent to the existing fill prisms of the South Bellevue Park-and-Ride and Bellevue Way SE roadway, or between the fill for the 112th Ave SE roadway and the Bellefield Office Park. Impacts within all areas have been minimized to the greatest extent possible; however, some impacts are unavoidable due to the location of the approved alignment, existing roadway infrastructure, and reconfiguration of the Winters House parking necessary to mitigate for displaced park facilities in coordination with the City.

Pursuant to LUC 20.25H.118, a mitigation and restoration plan is required for impacts to shoreline critical areas and shoreline critical area buffers and is described below. For a complete mitigation plan as it pertains to other critical area impacts (wetlands and streams) for the entire Project, refer to the CAR included in Appendix C of Attachment 3.

Per 20.25H.118.A, the mitigation preference for shorelines and shoreline critical area buffers is

to provide mitigation for impacts to critical area functions and values in the following order of preference:

1. On-site, through replacement of lost critical area buffer;
2. On-site, through enhancement of the functions and values of remaining critical area buffer;
3. Off-site, through replacement or enhancement, in the same sub-drainage basin;
4. Off-site, through replacement or enhancement, out of the sub-drainage basin but in the same drainage basin.

As stated above, shoreline critical area buffer impacts overlap other critical area impacts and are also addressed as impacts to wetland and/or stream critical area buffer impact. A complete accounting of impacts and associated mitigation is included in the East Link Light Rail Extension Critical Areas Report and Mitigation Plan (CAR) found in Appendix C of **Attachment 3**. Mitigation measures included in this report must be implemented with project construction as a condition of approval. See related condition of approval in Section X below.

Temporary impacts must also be restored to existing or better condition following completion of work. Permanent impacts must be mitigated at a greater ratio. The City does not identify mitigation ratios for rehabilitation or enhancement in lieu of creation. Absent specific ratios, the City follows the Washington State Department of Ecology guidance found in the publication *Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance* (hereby referred to as "Joint Guidance").

The following tables (Table 3 and Table 4) provide a summary of impacts and mitigation measures for impacts around Bellevue Way SE (see project CAR – Appendix C of **Attachment 3**), impacts around 112th Ave SE are described below. In accordance with the Joint Guidance reference, the total required mitigation using rehabilitation is 1.14 acres and 2.28 acres using enhancement. This mitigation requirement will be met within the planned 1.20 acres of wetland rehabilitation and 5.17 acres of wetland enhancement at the Sweyolocken mitigation site (see project CAR – Appendix C of **Attachment 3**). As previously discussed, buffer impacts are regulated under critical areas rules and addressed in the project design and mitigation permit.

Table 3 –Bellevue Way SE Area Impacts within Shoreline District

Activity	Impacted Resource	Permanent Wetland Impact Area (ac)	Temporary Wetland Impact Area (ac)	Permanent Wetland Conversion (ac)
Temporary Construction Access	Mercer Slough Wetland		0.30	
Winters House Parking Reconfiguration and Access Road	Mercer Slough Wetland	0.19		
Boardwalk	Mercer Slough Wetland			0.38
Total Impacts:		0.19	0.30	0.38

Table 4 – Summary of Bellevue Way SE Area Mitigation

Impacted Resource/Impact Type	Impact Area (ac)	Mitigation Ratio for Category II Wetland Impacts	Required Mitigation ¹ (ac)	Proposed Mitigation
Mercer Slough Wetland/Permanent Impact	0.19	6:1 (Rehabilitation)	1.14	Rehabilitation at Sweyolocken
Mercer Slough Wetland/Vegetation Conversion Impact	0.38	6:1 (Enhancement)	2.28	Enhancement at Sweyolocken

¹ Required mitigation areas are specific to impacts within the shoreline district for Mercer Slough Wetland only, and represent a subset of the project-wide mitigation requirements presented in Table 3-1 of CAR.

In the area north of SE 15th Street and east of 112th Ave SE, there are two existing wetlands associated with Mercer Slough that extend north of the OHWM of Mercer Slough and that are considered shoreline critical areas. There are temporary and permanent shoreline/wetland impacts in this area, as shown in Table 5 and described below.

Temporary impacts to shoreline/wetlands in this area are due to reconstruction of the 112th Ave SE and SE 15th Street roads. Road reconstruction includes improving the subgrade as needed, reinstalling drainage, and paving and striping of the reconstructed roadway. Temporary impacts of 0.16 acre will be mitigated by restoring the wetland areas to a reference wetland condition. There is no additional mitigation needed for these temporary impacts.

Two associated wetlands were identified north of SE 15th Street, designated Bellefield North and Bellefield South. The RLRT system cuts off the connection point between SE 15th Street and 112th Ave SE and requires realignment of the SE 15th roadway. The realignment of the roadway will permanently impact portions of both wetlands. As described in the Wetland and Stream Delineation Report (**Attachment 5**) for the Project, both wetlands are Category II and associated with Mercer Slough.

The Sweyolocken mitigation site will be used to satisfy the mitigation requirements for permanent impacts to these wetlands as a result of the road realignment. Table 6 provides a summary of the permanent impacts and required mitigation. The total required mitigation for permanent impact to the Bellefield South Wetland is 0.60 acres which will be met within the 5.17 acres of wetland enhancement at the Sweyolocken mitigation site. The permanent Bellefield North Wetland impacts required mitigation of 0.06 acres will be met within the 1.20 acres of wetland rehabilitation at the Sweyolocken mitigation site. Mitigation details are included in the project CAR – Appendix C of **Attachment 3**.

Table 6 – Summary of 112th Ave SE/Bellefield Office Park Area Mitigation

Impacted Resource/Impact Type	Impact Area (ac)	Mitigation Ratio for Category II Wetland Impacts	Required Mitigation ¹ (ac)	Proposed Mitigation
Bellefield South Wetland/Permanent Impact	0.05	12:1 (Enhancement)	0.60	Enhancement at Sweyolocken
Bellefield North Wetland/Permanent Impact	0.01	6:1 (Rehabilitation)	0.06	Rehabilitation at Sweyolocken

¹ Required mitigation areas are specific to impacts within the shoreline district for Mercer Slough Wetland only, and represent a subset of the project-wide mitigation requirements presented in Table 3-1 of CAR.

V. CONSISTENCY WITH THE CITY'S COMPREHENSIVE PLAN

Shoreline Uses and Activities

POLICY SH-1. Plan for reasonable and appropriate shoreline uses.

Finding: The RLRT System is an essential public facility per RCW 36.70A.200(1). On April 22, 2013 the City Council passed Resolution No. 8576 approving the “alignment location and general profile” of the East Link Project, and on April 25, 2013 the Sound Transit Board adopted Resolution No. R2013-09 selecting the route, profiles, and station locations. These resolutions have determined that the RLRT System and Facilities are reasonable and appropriate uses of the shoreline.

POLICY SH-2. Discourage short-term economic gain or convenience in development when potential, long-term adverse effects on the shoreline are possible.

Finding: The Project will bring long-term economic gain and environmental benefit to the City and the region by improving access to transit and transportation facilities. No long-term adverse effects on the shoreline are anticipated. All permanent impacts within the shoreline overlay district will be mitigated as required per LUC 20.25E and LUC 20.25H.

POLICY SH-3. Give priority to uses and activities which improve or are compatible with the natural amenities of the shorelines, provide public access, or depend on a shoreline location.

Finding: This is a regional project of significant public benefit that must pass through the City's shoreline district. The use and alignment have been approved by both the City Council and the Sound Transit Board and represents a compromise and balancing of regional and local policy objectives that sought to avoid wetland impacts to the greatest extent possible. The Project will provide visual access to the shoreline, and in addition, public access will be provided as part of the mitigation for the Project, particularly by the provision of a newly constructed boardwalk system to ensure connectivity and public access to the Mercer Slough.

POLICY SH-4. Limit the density and intensity of shoreline uses and activities through planning, zoning, capital improvements, and other policy and regulatory standards.

Finding: The City and Sound Transit have collaborated to design the Project to minimize the extent and intensity of use within the shoreline district.

POLICY SH-5. Plan and designate shorelines suited for public water-enjoyment uses.

Finding: This policy does not have project-specific application because it is directive to adoption of regulations contained in the SMP.

POLICY SH-6. Consider and encourage aesthetic values when reviewing development of the shoreline.

Finding: LUC Part 20.25M, which regulates development of the RLRT System and Facilities, provides both a process and standards for ensuring that aesthetic values are reflected in the System and Facilities. LUC 20.25M.050 states Design Guidelines, and the Citizen Advisory Committee reviews facility designs as they are developed. Review of aesthetic components of the proposed project is done through design and mitigation permit applications.

POLICY SH-7. Discourage expansion or redevelopment of existing shoreline uses or activities that are incompatible with the shoreline environment.

Finding: Not applicable.

POLICY SH-8. Discourage uses, activities, and developments in the shoreline area that create offensive, unsafe, or unmitigated adverse impacts.

Finding: The Project is designed collaboratively with the City to be attractive and safe, and will mitigate all adverse impacts.

POLICY SH-9. Preserve the natural amenities and resources of the shorelines in the context of existing and planned residential, recreational, and commercial land uses.

Finding: Existing uses of the shoreline will be preserved and all impacts will be mitigated within the Mercer Slough wetland complex. There will be no net loss of ecological functions. No long term adverse effects to the natural amenities and resources of the shoreline are anticipated. The proposed project is designed to be compatible with adjacent uses and development and the alignment selected represents the best design in the context of the urban setting.

POLICY SH-10. Encourage development to keep the water's edge free of buildings.

Finding: There are no buildings proposed within the shoreline district. A parking garage is proposed at the existing South Bellevue Park and Ride site; however this is not located within the shoreline district and does not exceed the existing Park and Ride's current pavement footprint.

POLICY SH-11. Consider the impacts on shorelines from uses and activities in the related drainage basin as a part of shoreline planning.

Finding: This policy does not have project-specific application because it is directive to adoption of regulations contained in the SMP.

POLICY SH-12. Designate and preserve environmentally sensitive areas. If necessary, control access and use for the protection of these areas.

Finding: Environmentally sensitive areas will be preserved. BMPs will be used during

construction to provide protection for adjacent sensitive resources. All temporary and permanent impacts within the shoreline critical area will be mitigated in accordance with LUC 20.25E and 20.25H.

POLICY SH-13. Protect and improve wildlife and aquatic habitats, particularly spawning waters.

Finding: All environmentally sensitive areas beyond those impacted by the work area will be preserved and protected. Permanent impacts will be mitigated within the Mercer Slough wetland complex. Temporarily impacted areas will be restored to equal or better condition. There will be no unmitigated impacts to spawning waters.

POLICY SH-14. Maintain water quality to permit swimming and other recreational uses.

Finding: No impact to beach park water quality is anticipated. All state and local effluent water quality standards will be met. Water quality treatment facilities will be constructed when required.

POLICY SH-15. Discourage landfill and dredging in the shoreline area.

Finding: No dredging is proposed as part of this work. Landfill within the shoreline area has been minimized to the extent possible.

POLICY SH-16. Discourage structures using materials which have significant adverse physical or chemical effects on water quality, vegetation, fish, and wildlife in or near the water.

Finding: The project, as designed, meets City code requirements intended to reduce impacts by influencing construction type and placement of structures. Structures have been designed and located to minimize impact to shoreline resources.

POLICY SH-17. Protect and restore shoreline areas which have historical, cultural, educational, or scientific value.

Finding: The historic Winters House is located adjacent to the shoreline district within the Project vicinity. In coordination with the City, the Winters House will be preserved and protected throughout construction of the Project. The final design will include reconstruction of the Winters House parking lot and driveways and will also include relocation of the Blueberry Farm retail center. Further, the Mercer Slough wetland complex will be protected except where the alignment must cross through the wetland system, cross streams, or impact the system buffer. Where impacts have been identified, mitigation is required. No other such areas, as listed in this Policy SH-17, are found within or adjacent to the Project within the shoreline district.

POLICY SH-18. Inland Shoreline Areas: Preserve the open character of Mercer Slough.

Finding: The open character of Mercer Slough will be preserved. The RLRT alignment, as approved by both Bellevue City Council and Sound Transit, is located along existing transportation corridors (Bellevue Way and 112th) and adjacent to the Mercer Slough Nature Complex. Permanent impacts to shoreline/wetland areas of the Slough, with the exception of the new boardwalk, will only occur along the edges of the wetland and are limited to less than 0.20 acres (less than 8,700 square feet). The new boardwalk will be located within the Mercer Slough wetland area, includes mitigation for impacts from boardwalk construction, and will help maintain public access to the natural areas of the Slough. The Slough is approximately 320 acres making the East Link project's impact less than 0.001% of the total area of the Slough.

Where temporary impacts occur, the area will be replanted with native vegetation and in some instances enhanced from the existing condition. Where possible, trees are being preserved to help screen the view of the RLRT facility from Mercer Slough and preserve the visual aesthetics of the area.

POLICY SH-19. Maintain an optimum water flow in the Mercer Slough Canal.

Finding: The flow of Mercer Slough Canal will not be impacted by this Project.

POLICY SH-20. Evaluate the needs and opportunities for additional public access in public-owned shoreline areas.

Finding: In coordination with the City, a boardwalk is proposed to enhance/improve the connectivity of the Mercer Slough Nature Park. A portion of the walking trail adjacent to the existing right of way will be removed by the Project. A boardwalk through the park connecting existing pathways and the historic Blueberry Farm will be constructed to maintain and improve public access within this area.

POLICY SH-21. Encourage acquisition and development of public access to the shorelines.

Finding: See the response to Policy SH-20.

POLICY SH-22. Improve the existing public access facilities owned by the City.

Finding: See the response to Policy SH-20.

POLICY SH-23. Emphasize public access with foot, bicycle, and handicap paths to and along the water's edge.

Finding: See the response to Policy SH-20.

POLICY SH-24. Develop, enhance, and maintain rights-of-way and street ends on the shorelines for public access.

Finding: The ability of existing rights-of-way and street-ends to provide public access will not be diminished.

POLICY SH-25. Provisions of public access should be consistent with public safety, private property rights, and protection of environmentally sensitive areas.

Finding: The new boardwalk will be designed and constructed for safe use and in conformance with all applicable regulations that protect environmentally sensitive areas. No private property rights will be adversely affected by the boardwalk. Existing city sidewalks and multi-use paths will be maintained adjacent to the shoreline district.

POLICY SH-26. Encourage public access to and along the water's edge for all development excluding individual single-family lots.

Finding: See the response to Policy SH-20.

POLICY SH-27. Preserve and enhance views of shoreline and water from public areas.

Finding: Within the project area there are views of the shoreline district from Bellevue Way SE and 112th Ave SE. The views along 112th Ave SE also include views of the water of Mercer Slough. Efforts have been made to preserve and enhance these views of the shoreline and water from public areas where possible. Tree removal has been kept to the minimum amount necessary to construct the project and meet safety requirements. Trees removed in the shoreline district will be mitigated by the replanting of trees elsewhere within the shoreline district to offset the change in character along Bellevue Way SE and 120th Ave SE. Mitigation for critical area buffer impacts will include enhancement of Mercer Slough buffer areas through removal of invasive plants and replanting with native shrubs and trees. These mitigation areas will enhance the views of the natural shoreline areas from Bellevue Way SE and 112th Ave SE and from within the Mercer Slough Park. The new boardwalk will also enhance the public's ability to enjoy views of the Mercer Slough shoreline areas by improving access to the Park.

POLICY SH-28. Increase and give high priority to a variety of recreational activities along the shoreline where appropriate and consistent with Environmental Element policies.

Finding: The new boardwalk, located strategically to enhance and connect the existing trail network with park facilities, will increase recreational activity.

POLICY SH-29. Encourage opportunities for passive forms of recreation and open space.

Finding: The new boardwalk will provide opportunities for bird-watching, animal-watching, and similar nature-oriented recreation.

POLICY SH-30. Encourage commercial shoreline uses to incorporate recreational activities into their shoreline area.

Finding: Not applicable. No commercial development is proposed.

POLICY SH-31. Work with other appropriate government agencies and jurisdictions to expand recreational opportunities through acquisition programs, development, and maintenance of shoreline areas.

Finding: Through coordination with the City, a boardwalk will be constructed through the Mercer Slough Nature Park within the wetland and wetland buffer to provide and maintain connectivity of the existing paths/boardwalks.

POLICY SH-32. Lake Washington: Provide regional launch facilities which recognize the boating demand in Bellevue and the carrying capacity of city infrastructure to support the boat launch.

Finding: Not applicable. No new or modified boating facilities are proposed.

POLICY SH-33. Separate boat launching from swimming areas wherever possible, to prevent accidents and contamination of swimming areas.

Finding: Not applicable. No boat launching or swimming area development is proposed.

POLICY SH-34. Lake Washington: Encourage private marinas to provide public small boat launching facilities.

Finding: Not applicable. No marina development is proposed.

POLICY SH-35. Provide facilities for launching small nonmotorized boats separate from other launching facilities.

Finding: Not applicable. No impact to launching facilities is proposed.

POLICY SH-36. Lake Washington and Lake Sammamish: Recognize the potential for a mix of uses compatible with the predominantly single-family residential character of the Lake Washington and Lake Sammamish shorelines.

Finding: Not applicable. No commercial or residential development is proposed.

POLICY SH-37. Encourage new subdivisions along shorelines to share private shoreline facilities in common.

Finding: Not applicable. No land division is proposed.

POLICY SH-38. Discourage shoreline commercial uses and activities, other than those which are water-dependent, from expanding beyond their existing boundaries.

Finding: The proposed East Link RLRT is a transportation use and is allowed in the Shoreline Overlay District. The East Link RLRT project was designed to minimize construction in sensitive areas, including the City's Shoreline Overlay District.

POLICY SH-39. Limit marina facilities to commercial or industrial areas. Day moorage may be permitted in recreational areas, but not in environmentally sensitive areas.

Finding: Not applicable. No marina development is proposed.

POLICY SH-40. Discourage incompatible commercial uses in the shorelines.

Finding: Not applicable. No commercial uses are proposed.

POLICY SH-41. Minimize roads and parking areas in the shoreline areas.

Finding: No new roads will be located in shoreline areas. 112th Ave. SE and SE 15th Street are both currently within the shoreline district and will need to be realigned to accommodate the light rail alignment.

POLICY SH-42. Design roads near the shoreline for slow traffic, to respond to topography, and to include scenic views.

Finding: Existing roads will be maintained or realigned as approved by the City. Existing speed limits will be retained. The existing alignment for 112th Ave. SE will be maintained. SE 15th Street will be realigned in conjunction with the 112th Ave SE road over rail crossing, but will maintain the existing connectivity. Access to the Winters House parking lot is being maintained with a structural lid over the trenched RLRT guideway. In addition, an access roadway will be required to allow maintenance vehicle access to the existing Blueberry Farm retail center and the Winters House parking lot.

POLICY SH-43. Design roads and improvements to existing roads and parking areas within, or adjacent to, shoreline wetlands to minimize pollution from storm water runoff.

Finding: All water quality standards will be met for stormwater runoff generated within or adjacent to shoreline areas.

POLICY SH-44. Encourage public transportation to access recreational areas on the shorelines.

Finding: The RLRT facility will provide increased transportation access and ridership throughout the alignment, including to the new station at the South Bellevue Park and Ride adjacent to the Mercer Slough. In addition, Project mitigation will provide increased access and mobility within the Mercer Slough Nature Park and the associated shorelines.

POLICY SH-45. Develop pedestrian and bicycle pathways, including provisions for maintenance, operation, and security, in Bellevue's shoreline areas.

Finding: Existing City sidewalks and multi-use paths will be maintained for the Project throughout the impacted areas. Within the shoreline area, impacted sidewalks will be restored. A boardwalk will be constructed within the Mercer Slough wetland to provide pedestrian access within the nature park and will include all applicable provisions for maintenance, operation and security.

POLICY SH-46. Inland Shoreline Areas: Circulation within Inland Shoreline Areas should be limited, as much as possible, to bicycles, pedestrians, and small non-motorized boats.

Finding: The East Link RLRT project was designed to minimize construction in sensitive areas, including the City's Shoreline Overlay District. Only a limited portion of the RLRT guideway is located within inland shoreline areas. Work within the inland shoreline area proposed under this permit includes RLRT guideway construction, and also includes peripheral facility components required under the City's development codes, such as stormwater outfalls, retaining walls, access driveways, and utility connections. The RLRT System will increase access to the Mercer Slough.

POLICY SH-47. Limit bulkheads upland of the ordinary highway mark except in the case of an approved landfill.

Finding: Not applicable. No bulkheads are included as part of this Project.

POLICY SH-48. Encourage the use of vegetation, cobbles, and gravels for stabilizing the water's edge from erosion over the use of bulkheads. Where bulkheads are used, their design should reduce the transmission of wave energy to other properties.

Finding: Not applicable. No bulkheads are proposed as part of this project.

POLICY SH-49. Discourage construction of jetties, groins, breakwaters, or other protective structures unless there is a demonstrated need for such structures.

Finding: Not applicable. No jetties, groins, breakwaters or other protective structures are proposed as part of this Project.

POLICY SH-50. Lake Washington and Lake Sammamish: Discourage construction of multiple or expanded piers except where public access is needed.

Finding: Not applicable. No piers are proposed as part of this Project.

POLICY SH-51. Lake Washington and Lake Sammamish: Consider the use of buoys and floating docks for moorage as a preferred alternative to the construction of piers.

Finding: Not applicable. The proposal includes no plan for installation of moorage in Mercer Slough.

POLICY SH-52. Inland Shoreline Areas: Limit piers in the Mercer Slough to minimal construction for ease of pedestrian and small non-motorized craft access.

Finding: Not applicable. The proposal includes no plan for construction of piers in Mercer Slough.

VI. PUBLIC COMMENT

A. Noticing

Applications for Shoreline Substantial Development Permit and Variance from the Shoreline Master Program were submitted on December 19, 2013. Both applications were noticed in accordance with Land Use Code public noticing requirements found in LUC 20.35.210.

Noticing for this project has been completed as follows:

Application Date:	December 19, 2013
Determination of Complete Application	January 16, 2014
Initial Public Notice (500 feet):	January 30, 2014
Initial Notice Comment Period:	March 3, 2014 (30 Days)
Revised Public Notice (500 feet):	February 13, 2014
Notice Comment Period:	March 17, 2014 (30 Days)

B. Project Re-Notice

Due to a discrepancy in the initial project notice project description, the application was re-noticed and comment period extended to reflect the re-notice. As required by WAC 173-27-110, a full 30 day comment period was kept open from the date of the second notice.

C. Public Comment Received

Three inquiries on the proposal have been received to date. Two inquiries were from Bellevue citizens and the third from Karen Walter of the Muckleshoot Indian Tribe. All three inquiries were limited to request for clarification or more information and no project comment has been received to date. No changes to the project design have been required as a result of public inquiry. Public inquiries are included as **Attachment 6**.

VII. STATE ENVIRONMENTAL POLICY ACT

Final Environmental Impact Statement (FEIS) was issued for the East Link RLRT project on July 15, 2011. Following issuance of the FEIS a SEPA addendum was issued on March 26, 2013. This FEIS, addendum, and supporting documentation fulfill State Environmental Policy Act requirements for the proposal. Measures intended to avoid, minimize, and mitigate impacts have been incorporated into the design.

VIII. SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT

A Substantial Development Permit is required for all development within the Shoreline Overlay

District; the project is located within 200 feet of Mercer Slough which are both identified as shoreline areas in the City's Shoreline Master Program.

20.30R.155 Decision Criteria

The Development Services Department Director shall approve, approve with modifications, or deny application for Shoreline Substantial Development if:

A. The applicant has carried the burden of proof and produced evidence sufficient to support the conclusion that the application merits approval or approval with modifications; and

Finding: The applicant has provided documentation that indicates the proposed development is consistent with all requirements set forth by the City and has designed and modified the proposal to include mitigation measures that will enhance the condition of the shoreline in this location. The project file includes a record in support of the proposed project. All applicable performance standards have been met by the project design. Further, the proposed East Link RLRT facility is considered a permitted use under LUC 20.10.440 when the City Council has approved the facility system by resolution, ordinance, or development agreement (see LUC 20.10.440 "Transportation and Utilities" Footnote 25). The Bellevue City Council has approved the East Link RLRT facility as proposed in this application. The alignment proposed by Sound Transit with this application is allowed. The use is also allowed, as established under LUC 20.10.440, in the Shoreline Overlay District and the Critical Areas Overlay District under LUC 20.25E.060 and LUC 20.25H.050.A.

B. The applicant has demonstrated that the proposal complies with the applicable decision criteria of the Bellevue City Code; and

Finding: The applicant has provided site plans and environmental documentation as well as shoreline restoration and landscaping plans in support of the proposal. The application has been found to be in compliance with the applicable performance standards of LUC 20.25E.080. See related conditions of approval in Section X of this report.

C. The applicant has demonstrated that the proposal is consistent with the policies and procedures of the Shoreline Management Act and the provisions of Chapter 173-14 WAC and the Master Program.

Finding: The proposal has been reviewed in accordance with the requirements of Bellevue's Shoreline Master Program, applicable sections of the WAC, the RCW, and other pertinent codes and policies. The proposed development will not limit the use of the shoreline by the public and will not cause undesired or unreasonable impacts on the surrounding environment and community. The proposal will promote the public use and enjoyment of the State's shoreline resources through enhancement of public access at Mercer Slough. See related conditions of approval in Section X of this report.

LUC 20.25E.080 Shoreline Development Performance Standards

The applicant has provided a response to each of the applicable Shoreline Overlay District Performance Standards listed in LUC 20.25E. City review of the proposal and the applicant's project narrative indicate the project, as designed, is compliant with the performance standards. See **Attachment 1**, Project Narrative.

IX. Variance to the Shoreline Master Program

Per LUC 20.25E.080.B.5, the maximum height for any structure proposed within the Shoreline Overlay District is 35 feet. A variance to the height restriction is required where the elevated guideway will cross above two small areas of the Mercer Slough wetland just north of the South Bellevue Park & Ride Station.

20.30H.155 Decision criteria

The City may approve or approve with modifications an application for Variance to the Shoreline Master Program if:

A. Denial of the variance would result in thwarting the policy of RCW 90.58.020; and

Finding: RCW 90.58.020 states that "It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest." For the factual reasons summarized above, the elevated guideway is a reasonable and appropriate use of the airspace above the two wetland areas where height will exceed 35 feet. The elevated guideway is the result of a multi-year, coordinated planning effort between Sound Transit and the City that culminated in the City Council's approval of the alignment and general profile of the Project in Resolution 8576 on April 22, 2013, and the Sound Transit Board's selection of the alignment, profiles and station locations in Resolution No. R2013-09 on April 25, 2013. Both the City Council and the Sound Transit Board have determined, in effect, that the elevated guideway promotes and enhances the public interest. There will be no reduction of the rights of the public in navigable waters because neither of the small wetland areas is navigable and because the guideway will be elevated, with no supporting columns or other structures in the wetlands.

RCW 90.58.020 also states that that "permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water." Sound Transit's design minimizes the height exceedance so that the guideway will be no more than 10 feet above the height limit for only 90 linear feet. The only potential adverse effect to the ecology of the wetland areas from the guideway will be the shadowing of vegetation, but the requested additional height will not increase adverse effects from shadows.

B. The applicant has demonstrated extraordinary circumstances and the public interest will suffer no substantial detrimental effect;

Finding: The need to design and build a portion of the Project along the east side of Bellevue Way SE, and to construct a light rail station and parking garage on the site of the existing Park & Ride, gave rise to a set of extraordinary circumstances, such that the City and Sound transit have engaged in years of planning to achieve a design that balances and accommodates all of the competing public and private interests. "No substantial detrimental effect" to the public interest will be created by the additional height that the guideway must achieve in order to construct a safe, elevated station at the Park & Ride. As discussed above, there will no detrimental effect on the wetland itself from the additional height, and the only other potential adverse effect will be a modest difference in the visual impact of the guideway for 90 linear feet as it descends from its elevation at the Park & Ride towards the trench in front of the Winters House. This additional height will not have a substantial detrimental effect on views because any views from the residences to the west already are screened by the many trees on the west side of Bellevue Way SE and the closest house is more than 200 feet away. In addition, new street trees will be planted at 25-foot intervals between the guideway and Bellevue Way SE.

C. The strict application of the bulk, dimensional or performance standards of the Master Program preclude or significantly interfere with a reasonable permitted use of the property; and

Finding: The City Council approved the location and profile of the Project, including the elevated South Bellevue Station at the Park & Ride, when it passed Resolution 8576. The City Council thus has legislatively determined that the elevated guideway is a reasonable permitted use of the affected property subject to LUC 20.25M.040B.1, which includes two small wetland areas below the elevated guideway. A strict application of the 35-foot height limit would preclude this use that the City Council has determined to be reasonable and appropriate.

D. The hardship described in subsection C of this section is specifically related to the property and is the result of unique conditions such as irregular lot shape or natural features and the application of the Master Program and not, for example, deed restrictions or the applicant's own actions; and

Finding: The need to construct the elevated guideway above the two small wetland areas is the result of the unique nature of the light rail alignment and the irregular shape of the shoreline boundary in this area, which reflects prior filling and grading activity when the Park & Ride and Bellevue Way SE were constructed.

E. The design of the project will be compatible with other permitted activities in the area and will not cause adverse effects to adjacent properties or the shoreline environment designation; and

Finding: The guideway is a transportation use that will be compatible with the adjoining transportation uses, Bellevue Way SE and the Park & Ride, and with the residential neighborhood on the west side of Bellevue Way SE, where the closest house is 200 feet away. The design of the guideway will be subject to a Design and Mitigation Permit issued by the City pursuant to LUC 20.25M, after review and issuance of an Advisory Document regarding the design by the Citizen Advisory Committee (CAC). As explained above, there are no meaningful adverse effects from the additional height to the shoreline environment or to adjacent properties.

F. The variance authorized does not constitute a grant of special privilege not enjoyed by the other properties in the area and will be the minimum necessary to afford relief; and

Finding: As explained above, it is not possible to reduce the height of the guideway any further because the height of the elevated station at the Park & Ride cannot be reduced without preventing buses from passing under the station and guideway, and the guideway will be more than 35 feet above grade as it passes above the two small wetland areas because of the dramatic change in grade between the Park & Ride and the Slough created by historic filling to construct Bellevue Way SE. The requested variance, to allow the modest height increase, is the minimum necessary to afford relief and allow the safe functioning of the Park & Ride with the light rail station. No other properties in the area or in the City need a shoreline variance to accommodate a guideway, so the variance will not constitute a grant of special privilege not enjoyed by other properties in the area.

G. If the development will be located either waterward of the ordinary high water mark or in a marsh, bog or swamp designated pursuant to Chapter 173-22 WAC.

1. **In place of subsection C of this section, the strict application of the bulk, dimensional or performance standards of the Master Program preclude a reasonable permitted use of the property, and**

Finding: The discussion under subsection C, above, demonstrates that strict application of the 35-foot height limit would preclude the reasonable use of the property for the elevated guideway that has been approved and allowed by Resolution 8576.

2. **The public rights of navigation and use of the shorelines will not be adversely affected by the granting of the variance.**

Finding: The navigable waters of Lake Washington are hundreds of feet from the two small wetland areas at issue. These wetland areas are adjacent to the Park & Ride and Bellevue Way SE and are not presently available or accessible for public use. Grant of the variance will simply increase the vertical distance between the wetland areas and the bottom of the guideway and will not adversely affect any use of the shorelines that theoretically could exist in this area in the future. For example, the proposed guideway would not preclude construction of a boardwalk or trail in this location if that were to be proposed at some future time.

X. DECISION OF DIRECTOR WITH CONDITIONS

After conducting the various administrative reviews associated with this proposal, including applicable Land Use consistency, SEPA (review of the EIS prepared by Sound Transit), and City Code and Standard compliance reviews, the Development Services Department Director does hereby **APPROVE with CONDITIONS** the application for Shoreline Substantial Development Permit, and **APPROVES** the application for Variance to the Shoreline Master Program.

The following conditions are imposed on all work within the City of Bellevue Shoreline Overlay District under authority referenced:

A. COMPLIANCE WITH BELLEVUE CITY CODES AND ORDINANCES

The applicant shall comply with all applicable Bellevue City Codes, Standards, and Ordinances (whether or not discussed in this report) including but not limited to:

Applicable Codes, Standards and Ordinances	Contact Person
Clearing & Grading Code – BCC 23.76	Tom McFarlane, 425-452-5207
Construction Codes – BCC Title 23	Building Review Desk, 425-452-4121
Fire Code – BCC 23.11	Fire Review Desk, 425-452-6800
Land Use Code – BCC Title 20	David Pyle, 425-452-2973
Noise Control Code – BCC 9.18	
Sign Code – BCC Title 22	
Transportation Code – BCC 14.60	Abdy Farid, 425-452-7915
Right of Way Use Code – BCC 14.30	ROW Review Desk, 425-452-6800
Utility Code – BCC Title 24	Art Chi, 425-452-4119

B. GENERAL CONDITIONS

1. UTILITY CODE REQUIREMENTS

The Utilities Department has reviewed the conceptual design only. The applicant must apply for and obtain all required construction permits. Compliance with applicable sections of the City's Utilities Codes (BCC 24) must be met prior to construction permit issuance.

AUTHORITY: BCC 24

REVIEWER: Art Chi

2. CLEARING AND GRADING CODE REQUIREMENTS

The Clearing and Grading Division has approved this proposal with the condition that the applicant apply for and obtain a Clearing and Grading Permit and that all applicable sections of the Clearing and Grading Code (BCC 23.76) be met prior to permit issuance. The applicant shall develop and submit complete clearing and grading plans and prepare a TESC plan for the Clearing and Grading reviewer that includes BMPs designed to limit the potential for surface water discharge into Mercer Slough.

AUTHORITY: LUC 20.30R, 20.25E, 20.25H, BCC 23.76

REVIEWER: Tom McFarlane

3. DESIGN AND MITIGATION PERMIT REQUIRED

Prior to issuance of RLRT project construction permits for work in the City of Bellevue Shoreline Overlay District, Sound Transit must first obtain the required Design and Mitigation Permit(s) as stipulated in LUC 20.25M and LUC 20.30F. Compliance with Design and Mitigation Permit, Shoreline Substantial Development Permit, and Variance approval conditions must be demonstrated through construction permit application(s).

AUTHORITY: LUC 20.25M, LUC 20.30F

REVIEWER: David Pyle

4. NOISE REQUIREMENTS

To mitigate noise impact to adjacent residents and the natural environment, hours of construction are limited to 7:00 a.m. to 6:00 p.m. on weekdays, and 9:00 a.m. to 6:00 p.m. on Saturdays which are not legal holidays. Requests for construction noise exemptions are addressed under BCC 9.18.020.C.

AUTHORITY: BCC 9.18

REVIEWER: David Pyle

5. CONSTRUCTION STAGING REQUIREMENTS

Construction activity within the Shoreline Overlay District shall be limited to the minimum necessary to undertake the development and to minimize the impact of construction activity on sensitive features in the district. The applicant shall prepare a construction staging plan to be submitted and approved as part of the projects right-of-way and construction permits and should coordinate site access with different phases of construction to maximize use of staging space and minimize expanded temporary impact and unnecessary tree removal.

AUTHORITY: LUC 20.30R

REVIEWER: David Pyle

6. STRUCTURE HEIGHT

All structures located within the Shoreline Overlay District shall be limited to 35 feet in height measured from average existing grade except as allowed through the associated shoreline variance approval and as defined in Attachment 4, Variance from the Shoreline

Master Program Narrative.

AUTHORITY: LUC 20.30H

REVIEWER: David Pyle

7. SEASONAL CLEARING AND GRADING RESTRICTIONS

The project is located adjacent to Mercer Slough where the potential for surface water discharge into the slough's wetland system is high. The project will be subject to work restrictions during the rainy season. The clearing & grading code defined rainy season will be applied through construction permit review. The Development Services Department Director must grant approval to initiate or continue clearing or grading activity during the rainy season. Any approval will be based on site and project conditions, extent and quality of the erosion and sedimentation control, and the project's track record at controlling erosion and sedimentation.

AUTHORITY: BCC 23.76

REVIEWER: Tom McFarlane

8. PUBLIC ACCESS IMPROVEMENTS

The public access improvements to Mercer Slough shall be implemented with construction permits and must be complete prior to system operation.

AUTHORITY: LUC 20.30R

REVIEWER: David Pyle

9. TREE REMOVAL

Tree removal within the shoreline overlay district shall be limited as follows:

- a) All trees within the 34 foot TCZ may be removed.
- b) Trees within the 30 foot TCZ buffer may be removed on an as needed basis when removal is required for construction and safe operation of the RLRT facility.
- c) Trees located outside the TCZ and the TCZ buffer shall be retained unless modification or removal is allowed under the standard tree preservation requirements of LUC 20.20, 20.25E, or 20.25H. Any hazard tree removal outside of the TCZ or TCZ buffer shall be supported by required hazard tree certification.

AUTHORITY: LUC 20.20, 20.25E, 20.25H, 20.25M

REVIEWER: David Pyle

C. PRIOR TO ISSUANCE OF ANY CONSTRUCTION PERMIT

1. DESIGN AND MITIGATION PERMIT REQUIRED

Prior to issuance of RLRT project construction permits, Sound Transit must first obtain the required Design and Mitigation Permit(s) as stipulated in LUC 20.25M and LUC 20.30F. Compliance with Design and Mitigation Permit, Shoreline Substantial Development Permit, and Variance approval conditions must be demonstrated through construction permit application(s).

AUTHORITY: LUC 20.25M, LUC 20.30F

REVIEWER: David Pyle

2. RIGHT-OF-WAY USE PERMIT

Prior to issuance of any construction or clearing and grading permit, the applicant shall secure applicable right-of-way use permits from the City's Transportation Department, which may include:

- a) Designated truck hauling routes.

- b) Truck loading/unloading activities.
- c) Location of construction fences.
- d) Hours of construction and hauling.
- e) Requirements for leasing of right of way or pedestrian easements.
- f) Provisions for street sweeping, excavation and construction.
- g) Location of construction signing and pedestrian detour routes.
- h) All other construction activities as they affect the public street system.

In addition, the applicant shall submit for review and approval a plan to maintain pedestrian access during construction of this project. Access shall be provided at all times during the construction process, except when specific construction activities such as shoring, foundation work, and construction of frontage improvements prevent access. General materials storage and contractor convenience are not reasons for preventing access.

The applicant shall secure sufficient off-street parking for construction workers before the issuance of a clearing and grading, building, a foundation or demolition permit.

AUTHORITY: BCC 11.70, 14.30

REVIEWER: ROW Review Desk

3. SUBMITTAL OF FINAL MITIGATION PLAN

Prior to the issuance of any construction permits, the applicant shall prepare and submit a final mitigation plan to the City and consistent with this staff report. Final approval of the mitigation plan shall be made by the project planner consistent with the findings of this staff report and the land use code.

AUTHORITY: LUC 20.30R, 20.25E, BCC 23.76

REVIEWER: David Pyle

4. DESIGN CHANGES

Any changes to the development plans requested by the Development Services Department or the applicant prior to the issuance of a construction permit must be undertaken in a manner that ensures compliance with design review objectives. Final approval shall be made by the project planner consistent with the findings of this staff report and consistent with professional judgment.

AUTHORITY: LUC 20.30F, 20.30H, 20.30R

REVIEWER: David Pyle

D. PRIOR TO ISSUANCE OF CERTIFICATE OF OCCUPANCY/FINAL INSPECTION

1. INSTALLATION OF REQUIRED MITIGATION

Installation of compensatory mitigation for wetland impacts, in accordance with the approved mitigation and monitoring plan, must be completed and approved prior to the issuance of a temporary certificate of occupancy or final inspection. Mitigation must be consistent with the project design and mitigation permit. Final mitigation installation approval/inspection shall be made by the project planner and an as-built plan of the installed mitigation shall be prepared by the applicant and submitted to the project clearing and grading permit as a post issuance revision. Monitoring reports demonstrating success in landscape establishment shall be submitted annually at the end of the growing season by December 31 for a period of ten years following installation.

Annual mitigation monitoring reports shall be submitted to:

David Pyle or Environmental Planning Manager
Land Use Division
Development Services Department
PO BOX 90012
Bellevue, WA 98009-9012

AUTHORITY: LUC 20.30R, 20.25E, 20.25H

REVIEWER: David Pyle

EXHIBIT D

**FIRST AMENDMENT TO
THE UMBRELLA MEMORANDUM OF UNDERSTANDING FOR
INTERGOVERNMENTAL COOPERATION
BETWEEN THE CITY OF BELLEVUE AND THE CENTRAL PUGET SOUND
REGIONAL TRANSIT AUTHORITY**

THIS First Amendment is made by and between the City of Bellevue, a non-charter optional municipal code city ("Bellevue" or "City"), and the Central Puget Sound Regional Transit Authority organized under RCW 81.112 ("Sound Transit"), to the Umbrella Memorandum of Understanding for Intergovernmental Cooperation executed between the parties on November 15, 2011 ("Umbrella MOU").

RECITALS

WHEREAS, the City and Sound Transit entered into the Umbrella MOU to construct, operate and maintain the East Link Project pursuant to the authority granted in City Resolution 8322 and Sound Transit Motion No. M2011-77;

WHEREAS, pursuant to the Umbrella MOU the Parties engaged in a collaborative process for design and development of the East Link Project, including identifying potential cost savings and alignment modifications;

WHEREAS, on March 26, 2013 Sound Transit completed and published the East Link Extension 2013 SEPA Addendum evaluating the potential modifications;

WHEREAS, on April 22, 2013 the Bellevue City council passed Resolution No. 8576 endorsing modifications for inclusion in the East Link Project and approving the East Link Project alignment location and general profile;

WHEREAS, on April 25, 2013, the Sound Transit Board adopted (1) Resolution No. R2013-09 selecting the route, profiles, and station locations for the East Link Project, including the City's endorsed modifications, thereby necessitating amendments to the Umbrella MOU and (2) Motion 2013-27 authorizing the chief executive officer to execute amendments to the Umbrella MOU;

NOW THEREFORE, in consideration of the mutual covenants contained herein, the City and Sound Transit do hereby agree to amend the Umbrella MOU as described below.

1.0 Section 1.11 is amended as follows:

1.11 Portal to Portal Costs. "Portal to Portal Costs" means those certain construction costs, as identified on Exhibit B (Portal to Portal Costs) and including the NE 6th Street station, attached and incorporated herein, against which the City Contingency may be applied.

2.0 Section 5.0 is deleted in its entirety.

3.0 Exhibit C, East Link Project Description, is replaced in its entirety with the attached Exhibit C - 1.

4.0 Unless expressly revised by this First Amendment, all other terms and conditions of the Umbrella MOU shall remain in effect and unchanged by this First Amendment.


IN WITNESS WHEREOF, each of the Parties hereto has executed this First Amendment to the Umbrella MOU by having its authorized representative affix her or his name in the appropriate space below:

IN WITNESS WHEREOF, each of the parties has executed this MOU by having its authorized representative affix his/her name in the appropriate space below:

CENTRAL PUGET SOUND REGIONAL CITY OF BELLEVUE
TRANSIT AUTHORITY

(SOUND TRANSIT)

By: 
Joan M. Earl, Chief Executive Officer

By: 
Brad Miyake, Acting City Manager

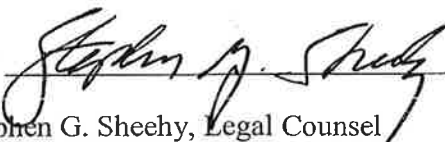
Date: 6/21/13

Authorized by Motion No. M2013-27

Date: 6-19-13

Authorized by Resolution No. 8596

Approved as to form:

By: 
Stephen G. Sheehy, Legal Counsel

Approved as to form:

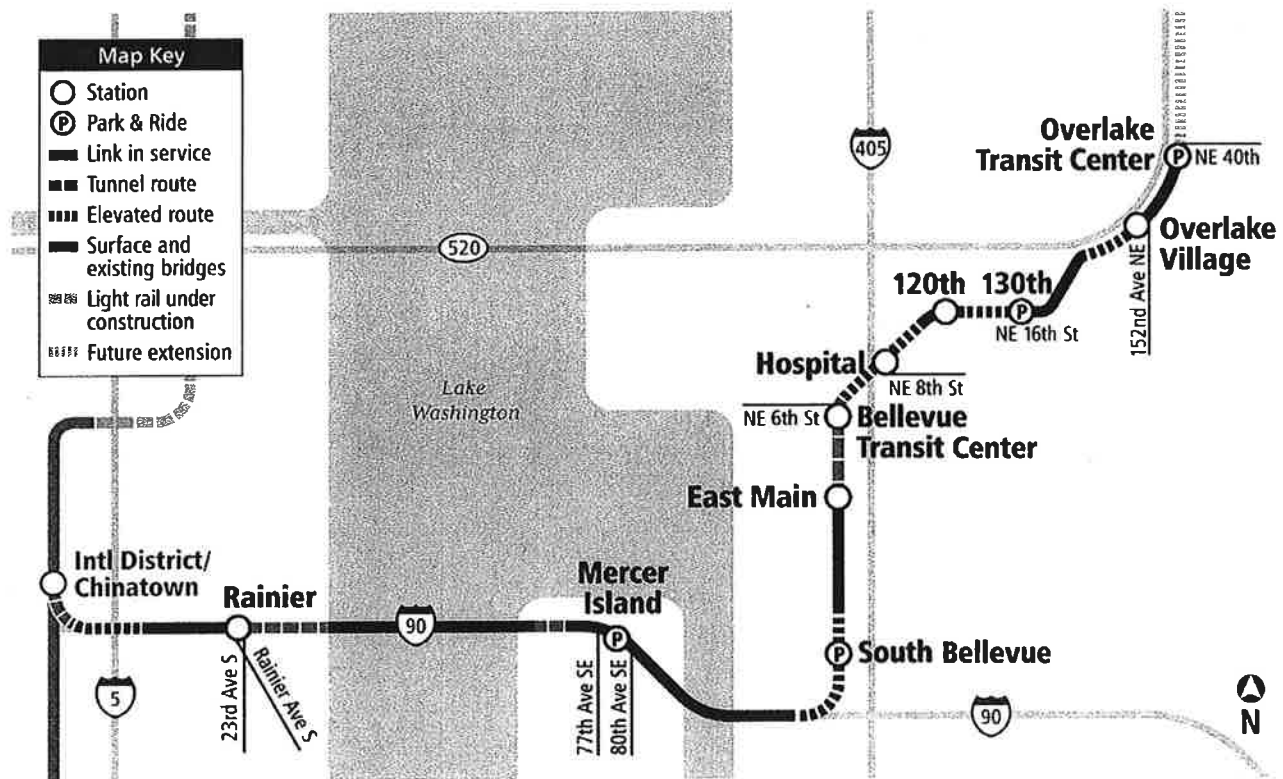
By: 
Mary Kate Berens, Deputy City Attorney

EXHIBIT C-1: EAST LINK PROJECT DESCRIPTION

The project consists of constructing and operating an approximately 14-mile light rail system including 10 stations known as East Link. This system would connect with Sound Transit's Central Link at the International District/Chinatown Station. It then would travel east across Lake Washington via Interstate 90 (I-90) to Mercer Island, Downtown Bellevue, Bel-Red, and terminate in Overlake. The figure below shows the four segments of the project.

Segments B, C, and a portion of segment D are within the City of Bellevue. The following describes the portions of the project in these segments within the City of Bellevue, beginning at the I-90 interchange with Bellevue Way, traveling into Downtown Bellevue, then proceeding east over I-405 and through the Bel-Red area. The portions of the East Link Project with the City of Bellevue include 6 stations over approximately 6 miles.

Current designs of the Project are between 15% and 60% complete and the parameters of project mitigation and construction are included in the East Link EIS and Addendum. While detailed design and mitigation will continue through project development, the City of Bellevue and Sound Transit are committed to managing within the project scope, schedule and budget.



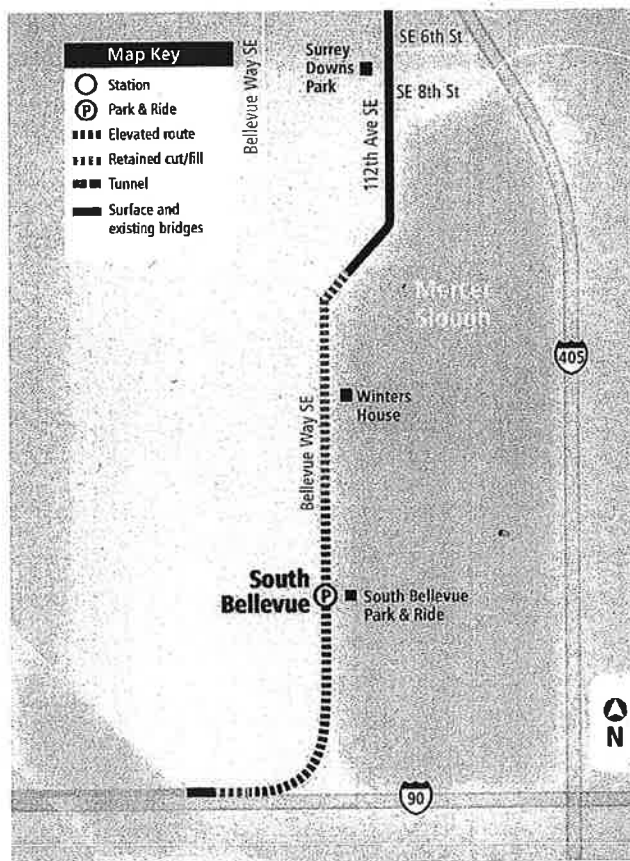
Segment B: South Bellevue

The selected project is elevated in the I-90 center roadway, crosses over westbound I-90, and continues elevated on the east side of Bellevue Way SE to the South Bellevue Station, located at the current South Bellevue Park-and-Ride Lot; this alternative also maintains the westbound and eastbound I-90 HOV direct access ramps.

The South Bellevue Station includes a parking structure with approximately 1,400 stalls on up to five levels built on the site of the existing South Bellevue Park-and-Ride Lot. After leaving the station, the route transitions to a retained cut on the east side of Bellevue Way within Mercer Slough Nature Park to the intersection of Bellevue Way SE and 112th Avenue SE. In front of the Winters House the route is in a lidded retained cut approximately 170 feet long. . All traffic impacts on Bellevue Way will be mitigated by adding an HOV lane from the main entrance of the S. Bellevue park-and-ride to I-90 and installing a U-turn at the south entrance to the park-and-ride.

The project transitions from retained cut to at-grade on the east side of 112th Avenue SE until SE 15th where it crosses to the west side. 112th Avenue SE will be raised over the light rail crossing of SE 15th. The project remains at-grade along 112th Avenue SE until reaching Segment C at SE 6th Street.

A traction power substation is located on the east side of Bellevue Way at SE 30th Street, near the Sweylocken boat launch and a cross-over is located south of the South Bellevue Station. All track within Segment B is direct fixation or ballasted.



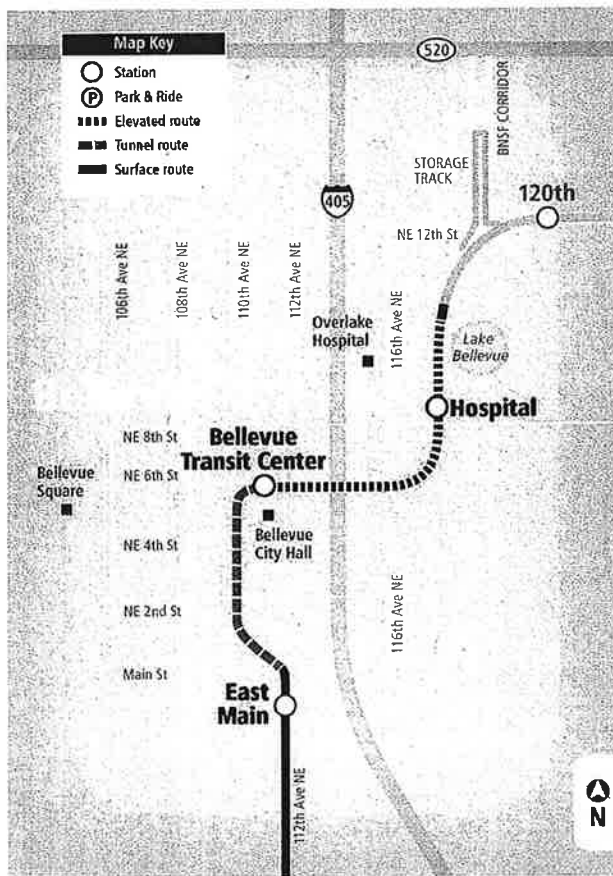
Segment C: Downtown Bellevue

The project travels from Segment B in a tunnel north along 110th Avenue NE, turns east at NE 6th Street, and crosses over I-405 to connect with Segment D.

From south Bellevue, the project travels at-grade on the west side of 112th Avenue SE, serving the East Main Station, just before turning west at Main Street to enter the tunnel portal on Main Street. The project includes modifying SE 4th Street to allow for an at-grade crossing for emergency vehicles only.

From the tunnel portal on Main Street, the project continues on the south side of Main Street before turning north under 110th Avenue NE and then east at NE 6th Street. The project includes the Bellevue Transit Center Station at NE 6th Street with two entrances. From this Station, the project continues east on the south side of NE 6th Street crossing 112th Avenue NE, I-405, and 116th Avenue NE. The project then turns north along the former BNSF Railway corridor to cross NE 8th Street and reach the elevated Hospital Station with entrances on the north side of NE 8th. The project then connects with Segment D from the former BNSF Railway corridor.

There is a traction power substation located near the intersection of Main Street and 112th Avenue SE. Cross-overs are located along 112th Avenue NE and between I-405 and 116th Avenue NE. All track within Segment C is direct fixation or ballasted.



Segment D: Downtown Bellevue to Overlake Transit Center

The project travels parallel to and north of a new NE 15th Street corridor east from the former BNSF Railway corridor in a mixed at-grade, retained-cut, and elevated profile. The project leaves the former BNSF Railway corridor at-grade and then transitions to a retained cut under 120th Avenue NE to a retained-cut 120th Station subject to a funding agreement with the property owner. After leaving the 120th Station, the route continues in a retained cut under 124th Avenue NE before transitioning to an elevated profile over the West Tributary of Kelsey Creek and then returns to the at-grade 130th Station. The 130th Station would include a new 300 stall park-and-ride lot adjacent to and immediately north of the station. The project continues at-grade on NE 16th Street, turns at 136th Place NE, and crosses NE 20th Street at-grade. NE 16th and 136th will be widened to create a median for light rail within the footprint described in the preliminary engineering plans. From NE 20th, the project transitions to an elevated structure along the south side of SR 520. The project then continues northeast across the Bellevue City Limits at 148th Ave NE and into the City of Redmond. Storage tracks would be in the former BNSF Railway corridor north of the Segment C/D break with lead tracks, operator report and light maintenance facilities adjacent to the corridor.

There are two traction power substations in the Bel-Red corridor: one near the 120th Station and one located under the elevated guideway at NE 24th Street. A cross-over is located between 124th and 130th Avenues NE. Other than embedded track between 130th and 136th Avenues NE, all track within Segment D is direct fixation or ballasted.

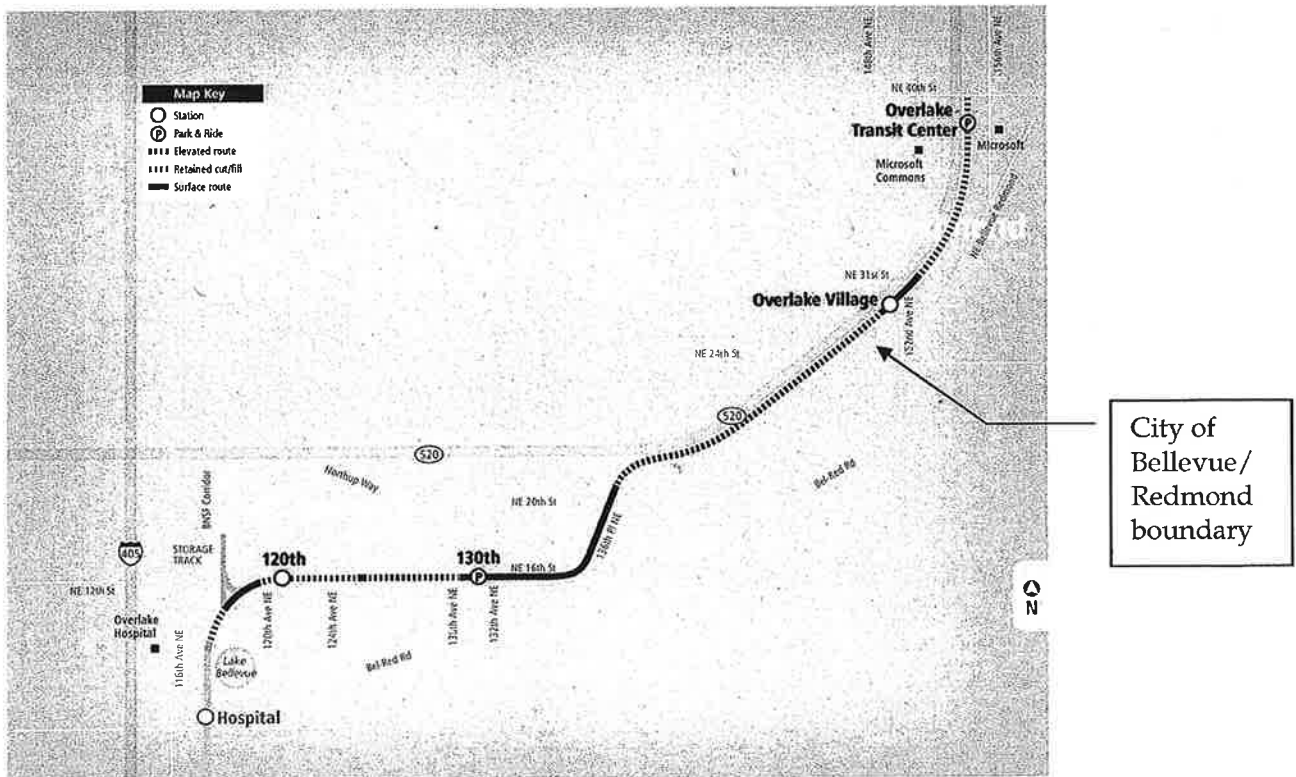
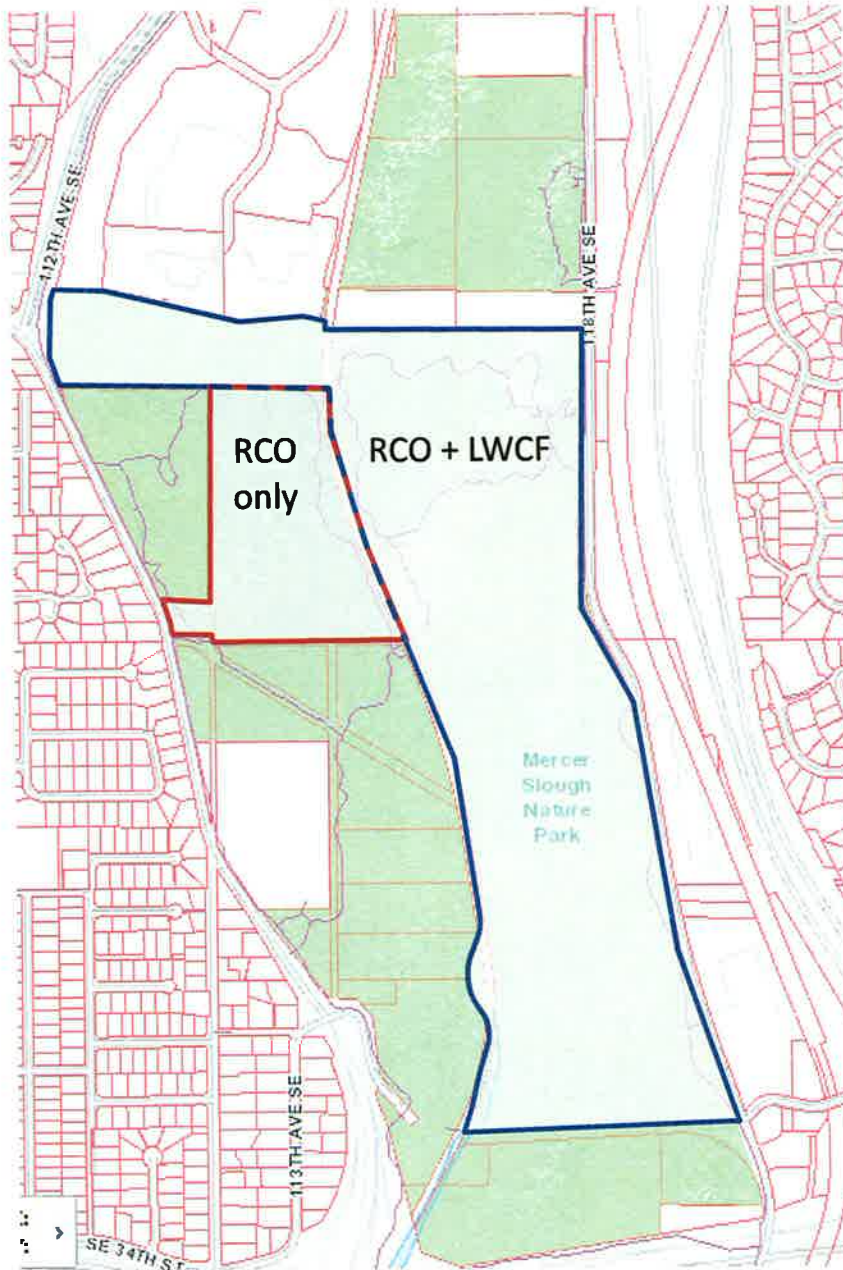


EXHIBIT E

Mercer Slough Nature Park Conversion

Existing Boundary



Proposed Boundary

